TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 562

THE UNITED STATES OF AMERICA, PETITIONER

vs.

HARRY J. MADIGAN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 8, 1936

CERTIORARI GRANTED JANUARY 11, 1937

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[Names and addresses of attorneys omitted in printing.]

[Citation in usual form showing service on David Spaulding filed Oct. 4, 1935, omitted in printing.]

In United States District Court in and for the Southern District of California, Central Division

No. 5920-H

HARRY J. MADIGAN, plaintiff

vs.

UNITED STATES OF AMERICA, defendant

Complaint

Filed Sept. 21, 1932

Comes now the plaintiff and for his first cause of action against the defendant alleges as follows, to-wit:

I

That the plaintiff is a resident of Monrovia, County of Los Angeles, State of California. That he enlisted for military service in the United States Army on the 15th day of May, 1917, and was honorably discharged on the 25th day of July, 1919.

II

That while in the military service of the United States dur-
4 ing the war time period, desiring to be insured against the risks of war, said Harry J. Madigan applied for a policy of war risk insurance in the sum of Ten Thousand Dollars ($10,000.00). That a certificate of war risk insurance was duly issued to him by the terms whereof the defendant agreed to pay said plaintiff, or his estate, the sum of Fifty-seven Dollars and Fifty Cents ($57.50) per month in the event he suffered permanent and total disability to such an extent that he would be unable to follow continuously any substantially gainful occupation.

III

That while the said insurance policy was in force and effect the said plaintiff contracted the following disability, to-wit: pulmonary tuberculosis.

IV

That by reason of the foregoing the plaintiff was discharged, as aforesaid, totally and permanently disabled from pumonary tubercu-

losis; and plaintiff has been informed and believes, and therefore alleges as true, that he will always be so disabled and never again be able to follow any substantially gainful occupation, by reason whereof he became entitled to receive from the defendant the sum of Fifty-seven Dollars and Fifty Cents ($57.50) per month commencing on th 25th day of July, 1919.

V

That the plaintiff has made due proof of said total and permanent disabilities to the said defendant and demanded payments of the aforesaid amounts, but the defendant disagreed with plaintiff as to his claim of disability and has wholly failed to pay to the
5 plaintiff the sum of Fifty-seven Dollars and Fifty Cents ($57.50) per month or any part thereof. That at this time the plaintiff is totally and permanently disabled and has been since the date of said discharge.

Wherefore, the plaintiff demands judgment against the defendant in the sum of Fifty-seven Dollars and Fifty Cents ($57.50) per month from the 25th day of July 1919.

Comes now the plaintiff and for his second cause of action against the defendant alleges as follows, to-wit:

I

Plaintiff includes paragraph one of his first cause of action as if it were here specifically set out.

II

Plaintiff includes paragraph two of his first cause of action as if it were here specifically set out.

III

Plaintiff includes paragraph three of his first cause of action as if it were here specifically set out.

IV

That at the time of plaintiff's discharge from service he ceased paying premiums on said policy of insurance. That at the time of plaintiff's discharge from said service plaintiff was suffering from a compensable disability. That a rating for compensation from the date of plaintiff's discharge was given plaintiff by representatives of the defendant on the 29th day of October 1921. That if plaintiff was not totally and permanently disabled on the date of his said discharge from service, then the plaintiff was totally
6 and permanently disabled from the 29th day of October 1921. That on the 29th day of October 1921, plaintiff was entitled

to due and uncollected compensation and that by reason of said due and uncollected compensation plaintiff's insurance was in full force and effect on the 29th day of October 1921. That the plaintiff became entitled to receive from the defendant the sum of Fifty-seven Dollars and Fifty Cents ($57.50) per month commencing on the 29th day of October 1921, less the unpaid premiums and interest thereon at five per cent per annum, compounded annually, from the date of plaintiff's discharge to the 29th day of October 1921.

V

That plaintiff has made due proof of said total and permanent disability to the said defendant and demanded payment of the aforesaid amounts, but the defendant disagreed with plaintiff as to his claim of disability and has failed to pay to the plaintiff the sum of Fifty-seven Dollars and Fifty Cents ($57.50) per month from the 29th day of October 1921. That the plaintiff is totally and permanently disabled and has been since the 29th day of October 1921.

Wherefore, plaintiff demands judgment against the defendant in the sum of Fifty-seven Dollars and Fifty Cents ($57.50) per month from the 29th day of October 1921, less the amount of unpaid premiums and interest thereon at the rate of five per cent per annum, compounded annually, from the date of plaintiff's discharge to the 29th day of October 1921.

David Spaulding,
DAVID SPAULDING,
Attorney for Plaintiff.

7 [*Duly sworn to by Harry J. Madigan, jurat omitted in printing.*]

In United States District Court

No. 5920–H

Affidavit of service

Filed Sept. 27, 1932

STATE OF CALIFORNIA,
County of Los Angeles, ss:

David Spaulding, being first duly sworn, upon his oath deposes and says:

That he is attorney of record for plaintiff in the above en-
8 titled action; that on the 22nd day of September 1932, the affiant mailed a true copy of the complaint in the above entitled action to the Attorney General at Washington, D. C., by registered mail, and that on the 21st day of September 1932, affiant

served two copies of the said complaint upon Samuel W. McNabb, District Attorney for the Southern District of California, Central Division.

David Spaulding,
DAVID SPAULDING.

Subscribed and sworn to before me this 26th day of September 1932.

[SEAL] IDA M. GIFFORD,
Notary Public in and for the said County and State.

My commission expires June 27, 1936.

[File endorsement omitted.]

In United States District Court

No. 5920–H

Answer

Filed Nov. 18, 1932

Comes now the Defendant, United States of America, by Samuel W. McNabb, United States Attoreny for the Southern District of California, and answering Plaintiff's Complaint herein, admits, denies, and alleges:

I

The Defendant has no information or belief sufficient to
9 enable it to answer the allegations of both causes of action of said Complaint and, placing its denial on that ground, denies each and every allegation therein contained.

Wherefore, the Defendant prays that the Plaintiff take nothing by this action, and that judgment be entered for the Defendant with its costs.

SAMUEL W. MCNABB,
United States Attorney,
Ignatius F. Parker,
IGNATIUS PARKER,
Assistant United States Attorney,
H. C. VEIT,
Veterans Administration Attorney,
Attorneys for Defendant.

[File endorsement omitted.]

In United States District Court

No. 5920–H

Agreed statement of facts and plaintiff's request for conclusions of law

Filed June 25, 1935

AGREED STATEMENT OF FACTS

It is hereby stipulated and agreed by and between the respective parties hereto, through counsel, that for the purpose of the above entitled action, the following facts shall be taken as true and correct:

I

That the plaintiff enlisted in the military service on the 15th day of July 1917 and was honorably discharged on the 25th day of July 1919; that while in said service plaintiff applied for and was granted $10,000.00 war risk term insurance, upon which premiums were paid to November 1, 1919.

II

That on November 1, 1919, plaintiff converted his $10,000.00 war risk term insurance contract into a 20-payment life policy of United States Government insurance, upon which premiums were paid so as to keep it in force until January 31, 1920; that on November 1, 1919, plaintiff was suffering from a compensable disability; that on January 31, 1920, plaintiff was suffering from a compensable disability.

III

That on June 6, 1925, the Veterans' Bureau rated plaintiff permanently and totally disabled, and on that date there was compensation due and unpaid plaintiff in the amount of $312.25. That a claim was filed by Plaintiff on Jan. 15, 1931—That said claimed was denied July 15, 1932.

David Spaulding,
DAVID SPAULDING,
Attorney for plaintiff,
Ernest D. Fooks,
ERNEST D. FOOKS,
Attorney,
Department of Justice.

CONCLUSIONS OF LAW

(See requested conclusions of law incorporated in Bill of Exceptions.)

[File endorsement omitted.]

11 In United States District Court

No. 5920–H

Findings of fact and conclusions of law

Filed July 10, 1935

This matter coming on regularly to be heard before the undersigned, one of the Judges of the above entitled Court, plaintiff appearing by his counsel, David Spaulding, and defendant appearing by Pierson N. Hall, United States Attorney for the Southern District of California, and Ernest D. Fooks, Attorney, Department of Justice, from the evidence submitted, the following Findings of Fact are made:

I

That at the time of the commencement of this action, plaintiff, Harry J. Madigan, was and still is, a citizen of the United States and a resident of the County of Los Angeles, State of California.

II

That the plaintiff enlisted for military service in the United States Army on the 15th day of May, 1917, and was discharged therefrom on the 25th day of July, 1919.

III

That plaintiff, Harry J. Madigan, on February 5, 1918, applied for, and was granted, a contract of war risk term insurance in the amount of $10,000.00, and paid premiums thereon so as to keep it in force until November 1, 1919.

12 IV

That on November 1, 1919, plaintiff Harry J. Madigan was suffering from a compensable disability; that on June 6, 1925, plaintiff had due and uncollected compensation in the amount of $312.25; that on June 6, 1925, plaintiff became permanently and totally disabled.

V

That defendant, United States of America, has disagreed with plaintiff as to his claim for benefits under the war risk insurance contract.

VI

That the defendant is entitled to a credit for any monies heretofore paid plaintiff as insurance benefits subsequent to November 1, 1919; that the plaintiff is entitled to recover any monies paid as insurance premiums subsequent to November 1, 1919.

CONCLUSIONS OF LAW

From the above Findings of Fact, the Court makes the following Conclusions of Law:

I

That plaintiff became permanently and totally disabled on June 6, 1925.

II

That plaintiff is entitled to benefits under his $10,000.00 term contract of insurance in the amount that $312.25 would purchase were it applied as premiums when due between November 1, 1919, and June 6, 1925, said premiums computed at the rate provided by Section 302 of the War Risk Insurance Act as amended December
13 24, 1919, less said unpaid premiums and interest thereon, at five per cent per annum, compounded annually.

Dated: This 10 day of July, 1935.

HOLLZER,
United States District Judge.

Approved as to form, as provided in Rule 44.

ERNEST D. FOOKS,
For Assistant U. S. Attorney.

[File endorsement omitted.]

In United States District Court in and for the Southern District of California, Central Division

HARRY J. MADIGAN, *plaintiff*

vs.

UNITED STATES OF AMERICA, *defendant*

No. 5920–H

Judgment

Filed July 10, 1935

The above entitled cause came on duly to be heard before the Honorable Harry A. Hollzer, one of the Judges of the above entitled Court, plaintiff appearing by his attorney, David Spaulding,
14 and defendant, United States appearing by Pierson N. Hall, United States Attorney and Ernest D. Fooks, Attorney Department of Justice; a jury having been duly waived and the evidence submitted to the Court upon an agreed statement of facts, and the Court having duly considered the evidence submitted by both

parties, and having rendered an opinion in favor of the plaintiff to the effect that Harry J. Madigan became permanently and totally disabled on June 6, 1925; that on June 6. 1925, Harry J. Madigan had due and uncollected compensation from the defendant, in the amount of $312.25; that on November 1, 1919, the last date plaintiff paid premiums on his $10,000.00 term policy of insurance, plaintiff Harry J. Madigan was suffering from a compensable disability, and in consequence thereof, Harry J. Madigan or his estate, became entitled to receive from defendant under his $10,000.00 term policy of insurance, the amount of insurance that $312.25 would purchase applied as premiums when due on his $10,000.00 term insurance policy, between November 1, 1919, and June 6, 1925, said premium computed at the rate provided by Section 302 of the War Risk Insurance Act as Amended December 24, 1919, less the unpaid premiums and interest thereon at five per cent per annum compounded annually.

Now therefore, it is ordered, adjudged, and decreed that the plaintiff recover from the defendant, benefits in accordance with the terms of the said $10,000.00 war risk term insurance contract, commencing June 6, 1925, in the amount that $312.25 would purchase if applied as premiums when due between November 1, 1919 and June 6, 1925, said premiums computed at the rate provided by Section 302 of the War Risk Insurance Act as amended December 24, 1919, less the unpaid premiums and interest thereon, at five per cent per annum, compounded annually, and as provided in Section 305 of the World War Veterans' Act (Section 518 Title 28, U. S. C. A.).

It is further ordered, adjudged, and decreed that any and all contracts of insurance entered into between plaintiff and defendant other than his $10,000.00 term contract of insurance, be, and the same are, hereby cancelled and set aside, and that the plaintiff recover from defendant all money paid subsequent to November 1, 1919, as premiums on insurance; that the defendant is entitled to a credit herein for any monies heretofore paid plaintiff by defendant as insurance benefits.

It is further ordered that David Spaulding is entitled to receive from said Judgment as a reasonable attorney fee for his services as attorney in the above entitled cause, ten per cent of the amount of any and all monies due plaintiff in accordance herewith, and that he is entitled to receive a further sum of ten per cent of each and every payment other than the said sum found to be due hereunder, hereinafter made by the defendant to the plaintiff, his heirs, executors, and assigns, in consequence of, or as the result of the entry of this Judgment, said payments, however, to be made as by law in such cases provided.

Done in open court this 10 day of July 1935.

HOLLZER,
United States District Judge.

Approved as to form, as provided in Rule 44.

ERNEST D. FOOKS,
For Assistant U. S. Attorney.

7-829.

Judgment entered and recorded July 10th, 1935. R. S. Zimmerman, Clerk. By M. R. Winchell, Deputy Clerk.

[File endorsement omitted.]

In United States District Court

No. 5920-H

Bill of exceptions

Filed Nov. 14, 1935

Be it remembered that heretofore, to-wit, on the 23rd day of October 1934, the above-entitled cause came on for trial at the City of Los Angeles, in said District, upon the issues joined herein, before the Honorable Harry A. Hollzer, sitting as a Judge of said Court, and was thereafter continued for hearing and argued on the 25th day of June 1935, upon an Agreed Statement of Facts heretofore filed.

Plaintiff was represented by David Spaulding, Esq., and
17 the defendant was represented by Peirson M. Hall, Esq., United States Attorney for the Southern District of California, and Ernest D. Fooks, Esq., Attorney, Department of Justice, of said district.

The Court, sitting without a jury, considered the evidence as shown by the Agreed Statement of Facts and made its conclusions of law in favor of the plaintiff thereon.

Whereupon, the defendant moved for special findings and submitted to the Court its Requested Findings of Fact and Conclusions of Law, which are as follows:

[Title omitted.]

Requested findings of fact and conclusions of law

Now comes Peirson M. Hall, United States Attorney for the Southern District of California, and Ernest D. Fooks, Attorney, Department of Justice, Attorneys for defendant in the above-entitled cause, and requests the Court to make the following findings of fact and and conclusions of law:

18 FINDINGS OF FACT

I

The Court finds that plaintiff on February 5, 1918, applied for and was granted a contract of war risk term insurance in the amount

of $10,000.00, and paid premiums thereon so as to keep it in force until November 1, 1919.

II

The Court finds that on November 1, 1919, plaintiff converted his $10,000.00 war risk term insurance contract into a 20-payment life policy of the United States Government Insurance and paid premiums thereon so as to keep it in force, including grace period, until January 31, 1920.

III

The Court finds that on January 31, 1920, plaintiff was suffering from a compensable disability.

IV

The Court finds that on June 6, 1925, the Veterans' Bureau rated plaintiff permanently and totally disabled; and at that time there was compensation due and unpaid plaintiff.

CONCLUSIONS OF LAW

I

The Court finds that there was no lapsation, cancellation, or reduction of the $10,000.00 war risk term insurance contract.

II

The Court finds that by virtue of Section 305 (Section 516,
19 Title 38, U. S. C. A.) plaintiff's $10,000.00 converted contract of insurance was revivable in the amount of $2,170.92.

III

The Court finds that plaintiff is not entitled to Judgment as prayed for herein.

IV

The Court finds that the defendant is entitled to Judgment and for its costs incurred herein.

Respectfully submitted.

Peirson M. Hall,
PEIRSON M. HALL,
United States Attorney,
Ernest D. Fooks,
ERNEST D. FOOKS,
Attorney,
Department of Justice.

Dated: June 24, 1935.

Whereupon, plaintiff requested the Court to make certain conclusions of law, which are as follows:

Requested conclusions of law

From the above agreed statement of facts, the Court makes the following conclusions of law:

I

That by virtue of Section 307 of the World War Veterans Act as amended by the Act of July 3, 1930 (38 U. S. C. A. 518) plaintiff has the right to elect to recover under either his term policy from November 1, 1919, or under his converted policy from January 31, 1920.

II

That by virtue of Section 305 (38 U. S. C. A. 516) plaintiff
20 is entitled to recover the amount of insurance that $312.25 computed at the rate provided in Section 302 of the War Risk Insurance Act as Amended December 24, 1919, would purchase if applied as premiums when due.

Dated: June 24, 1935.

Respectfully submitted.

David Spaulding,
DAVID SPAULDING,
Attorney for plaintiff.

Motion for judgment

Whereupon the defendant moved for judgment on the grounds that under the pleadings, the Agreed Statement of Facts, and the law of the case, the plaintiff was not entitled to recover.

The Court thereupon overruled said motion, to which ruling of the Court the defendant, by its counsel, then and there duly excepted.

And thereupon, on the 10th day of July 1935, the Court made and filed its Findings of Fact and Conclusions of Law and judgment in said cause (reference is hereby made to said Findings of Fact and Conclusions of Law and judgment as shown by the record herein), to which said Conclusions of Law of the Court the defendant at the time duly excepted and still excepts.

And thereupon on the 11th day of July 1935, upon the application of the defendant and for good cause shown, the following order was entered:

Order extending time within which to serve and file bill of exceptions and extending term

On motion of Peirson M. Hall, United States Attorney for
21 the Southern District of California, and Ernest D. Fooks,

Attorney Department of Justice, and good cause appearing therefor:

It is ordered that the time within which the defendant herein may serve and file its proposed Bill of Exceptions herein is hereby extended to and including October 10, 1935.

It is further ordered that for the purpose of making and filing Bill of Exceptions herein, and the making of any and all motions necessary to be made within the Term in which the Judgment herein was entered, the Term of this Court is hereby extended to and including October 10, 1935.

Dated: July 11, 1935.

HOLLZER,
United States District Judge.

And thereafter, and on the 3rd day of October 1935, upon the application of the defendant, and for good cause shown, the following order was entered:

Order extending time within which to serve and file bill of exceptions and extending term

On motion of Peirson M. Hall, United States Attorney for the Southern District of California, Ernest R. Utley, Assistant United States Attorney, and Ernest D. Fooks, Attorney, Department of Justice, and good cause appearing therefor,

It is ordered that the time within which the defendant herein may serve and file its proposed Bill of Exceptions herein is hereby extended to and including January 10, 1936.

22 It is further ordered that for the purpose of making and filing Bill of Exceptions herein, and the making of any and all motions necessary to be made within the Term in which the Judgment herein was entered, the Term of this Court is hereby extended to and including January 10, 1936.

Dated: October 3, 1935.

HOLLZER,
United States District Judge.

And now, in furtherance of justice, and that right may be done, the defendant, the United States of America, presents the foregoing as and for its Bill of Exceptions in the above-entitled cause, and prays that the same may be settled, allowed, signed, and filed as such.

Pierson M. Hall,
PIERSON M. HALL,
United States Attorney,
Ernest D. Fooks,
ERNEST D. FOOKS,
Attorney,
Department of Justice.

Acknowledgment of service

The undersigned, David Spaulding, Esq., for and on behalf of Harry J. Madigan, plaintiff in the above-entitled cause, does hereby acknowledge service of the above and foregoing bill of exceptions this 14 day of November 1935, and having examined the same does agree that the same contains all the evidence given, and proceedings had on the trial of this action, and that it is full, true and correct in all respects, and that the same may be allowed, settled, signed, and filed and made a part of the record in said cause, and does
23 hereby waive the right to be present at the settlement and allowance of said bill of exceptions.

David Spaulding,
DAVID SPAULDING,
Attorney for Plaintiff.

Order settling bill of exceptions

And thereupon, and on the 14th day of November, 1935, upon due notice to the said Harry J. Madigan, plaintiff, and within the time limited and granted by the Court therefor, the foregoing bill of exceptions is duly tendered by the United States of America, defendant, for signing, settlement, and allowance as the bill of exceptions in said cause, and the said defendant and plaintiff having agreed that the same contains all the evidence given, and proceedings had on the trial of this action, and that it is full, true, and correct in all respects;

It is ordered that the above and foregoing be and the same is hereby duly settled, certified and allowed as the bill of exceptions in said cause, and as being true and correct, and the same is hereby made a part of the record in said cause and ordered filed as such.

Done this 14 day of November, A. D. 1935.

HOLLZER,
United States District Judge,
Trial Judge in said Cause.

[File endorsement omitted.]

In United States District Court

24 [Title omitted.]

No. 5920-H

Petition for appeal

Filed Oct. 3, 1935

To the Honorable HARRY H. HOLLZER, JUDGE OF THE ABOVE-ENTITLED COURT:

Now comes the Defendant, United States of America, by Peirson M. Hall, United States Attorney for the Southern District of Cali-

fornia, Ernest R. Utley, Assistant United States Attorney for said District, and Ernest D. Fooks, Attorney, Department of Justice, and feeling itself aggrieved by the judgment entered in this cause, hereby prays that an appeal may be allowed, to-wit: from the United States District Court for the Southern District of California to the United States Circuit Court of Appeals for the Ninth Circuit, and in this connection this Petitioner, with this Petition, hereby presents its Assignments of Error.

Dated: October 3, 1935.

Peirson M. Hall,
PEIRSON M. HALL,
United States Attorney.

25

Ernest R. Utley,
ERNEST R. UTLEY,
Assistant United States Attorney.

Ernest D. Fooks,
ERNEST D. FOOKS,
Attorney, Department of Justice.

[File endorsement omitted.]

In United States District Court

No. 5920–H

Assignments of error

Filed Oct. 3, 1935

Comes now the Defendant, the United States of America, by Peirson M. Hall, United States Attorney for the Southern District of California, Ernest R. Utley, Assistant United States Attorney for said District, and Ernest D. Fooks, Attorney, Department of Justice, and for its Assignments of Error, alleges as follows:

I

That the Court erred in denying defendant's requested finding that there was no lapsation, cancellation, or reduction of the $10,000.00 war risk term insurance contract on November 1, 1919.

II

That the Court erred in finding that plaintiff was entitled to benefits under his $10,000.00 contract of term insurance in the

26 amount that $312.25 would purchase were it applied as premiums when due between November 1, 1919, and June 6, 1925, said premiums computed at the rate provided by Section 302 of the War Risk Insurance Act as amended December 24, 1919, less unpaid premiums and interest thereon, at five per cent per annum, compounded annually.

III

That the Court erred in finding that plaintiff is entitled to recover any monies paid as insurance premiums subsequent to November 1, 1919.

IV

That the Court erred in denying defendant's requested finding that by virtue of Section 305 (Section 516, Title 28, U. S. C. A.) plaintiff's $10,000.00 converted contract of insurance was revivable in the amount of $2,170.92.

V

That the Court erred in finding that plaintiff had the right to elect to recover insurance benefits under either his term policy from November 1, 1919, or under his converted policy from January 1, 1920, by virtue of Section 307 of the World War Veterans Act as amended by the Act of July 3, 1930 (38 U. S. C. A. 518).

VI

That the Court erred in denying defendant's motion to dismiss plaintiff's cause of action and granting defendant judgment with its costs incurred.

Dated: October 3, 1935.

Peirson M. Hall,
PEIRSON M. HALL,
United States Attorney,
Ernest R. Utley,
27 ERNEST R. UTLEY,
Assistant United States Attorney,
Ernest D. Fooks,
ERNEST D. FOOKS,
Attorney, Department of Justice,
Attorneys for Defendant.

[File endorsement omitted.]

In United States District Court

No. 5920-H

Order allowing appeal

Filed Oct. 3, 1935

It is hereby ordered that the appeal prayed for in the Petition for Appeal in the above-entitled cause be allowed.

Dated: October 3, 1935.

HOLLZER,
United States District Judge.

[File endorsement omitted.]

In United States District Court

No. 5920–H

Praecipe for record

Filed Nov. 14, 1935

To the CLERK OF THE ABOVE-ENTITLED COURT:

You will please prepare a Transcript on Appeal herein including the following portions of the record, to-wit:

1. Citation.
2. Complaint.
28 3. Affidavit of Service of Complaint.
4. Answer.
5. Agreed Statement of Facts.
6. Findings of Fact and Conclusions of Law.
7. Judgment.
8. Bill of Exceptions.
9. Petition for Appeal.
10. Order Allowing Appeal.
11. Assignments of Error.
12. This Praecipe.

PEIRSON M. HALL,
United States Attorney,
ERNEST D. FOOKS,
Attorney, Department of Justice,
Attorneys for Defendant and Appellant.

Due service is acknowledged of the fore-going Praecipe, and it is stipulated that the contents thereof may constitute the record on Appeal.

Dated this 14th day of November 1935.

David Spaulding,
DAVID SPAULDING,
Attorney for Plaintiff and Appellee.

[Clerk's Certificate to foregoing transcript omitted in printing.]

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, APPELLANT

vs.

HARRY J. MADIGAN, APPELLEE

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt from proceedings of Wednesday, April 8, 1936

Before WILBUR, GARRECHT, and HANEY, Circuit Judges

Order of submission

Ordered above cause argued by Mr. Randolph C. Shaw, Special Assistant to the Attorney General, counsel for appellant, and by Mr. David Spaulding, counsel for appellee, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt from proceedings of Tuesday, September 8, 1936

Before DENMAN and MATHEWS, Circuit Judges

Order directing filing of opinion and the filing and recording of judgment

By direction of the court, ordered that the typewritten opinion this day rendered by this court in the above cause be forthwith filed by the clerk and that a judgment be filed in said cause and recorded in the minutes of this court in accordance with the opinion rendered.

In the United States Circuit Court of Appeals for the Ninth Circuit

No. 8038

UNITED STATES OF AMERICA, APPELLANT

vs.

HARRY J. MADIGAN, APPELLEE

September 8, 1936

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

Before WILBUR, GARRECHT, and HANEY, Circuit Judges

GARRECHT, Circuit Judge: Harry J. Madigan entered the Military Service of the United States July 15, 1917, and, after service, was honorably discharged on July 25, 1919. While in such military service he applied for and was granted $10,000 war risk insurance, upon which premiums were paid to November 1, 1919. On this latter date Madigan converted his $10,000 war risk term insurance contract into a 20-payment life policy of United States Government insurance, upon which premiums were paid to keep it in force until January 31, 1920.

On November 1, 1919, and also on January 31, 1920, appellee was suffering from a compensable disability. On June 6, 1920, the Veteran's Bureau rated him totally and permanently disabled, and on said date there was due him as compensation the sum of $312.25.

The case was tried to the court without jury on an agreed statement of facts and judgment entered for plaintiff, from which the government appeals.

The statute under which the action was brought (Section 305 of the World War Veterans' Act; 43 Stat. 626, amended 44 Stat. 799, 45 Stat. 971, 46 Stat. 1016; 38 U. S. C. A., §516 (Quoted), is as follows:

"Where any person has, prior to June 7, 1924, allowed his insurance to lapse, or has canceled or reduced all or any part of such insurance, while suffering from a compensable disability for which compensation was not collected, and dies or has died, or becomes or has become permanently and totally disabled, and at the time of such death or permanent total disability was or is entitled to compensation remaining uncollected, then and in that event so much of his insurance as said uncollected compensation, computed in all cases at the rate provided by section 302 of the War Risk Insurance Act, as amended December 24, 1919, chapter 16, Forty-first Statutes, page 371, would purchase if applied as premiums when due, shall not be considered as lapsed, canceled, or reduced; and the Veterans' Administration is hereby authorized and directed to pay said soldier or his beneficiaries, as the case may be, the amount of said insurance less the unpaid premiums and interest thereon at 5 per centum per annum, compounded annually, in installments as provided by law: Provided,

That insurance revived after June 7, 1924, under this section and section 516 b of this title by reason of permanent and total disability or by death of the insured, shall be paid only to the insured, his widow, child or children, dependent mother or father, and in the order named, unless otherwise designated by the insured during his lifetime or by last will and testament: Provided Further, That compensation which is uncollectible by reason of the provisions of section 310 of the War Risk Insurance Act, as amended, or section 499 of this title, shall be considered as uncollected compensation for the purposes of this section."

And Section 307 of the World War Veterans' Act (43 Stat. 627; amended, 46 Stat. 1001, 46 Stat. 1016; 38 U. S. C. A., §518 (quoted), is as follows:

"All contracts of policies of insurance heretofore or hereafter issued, reinstated, or converted shall be incontestable from the date of issuance, reinstatement, or conversion, except for fraud, nonpayment of premiums, or on the ground that the applicant was not a member of the military or naval forces of the United States, and subject to the provisions of section 447 of this title: Provided, That the insured under such contract or policy may, without prejudicing his rights, elect to make claim to the Veterans' Administration or to bring suit under section 445 of this title on any prior contract or policy, and if found entitled thereto shall, upon surrender of any subsequent contract or policy, be entitled to payments under the prior contract or policy: Provided further, That this section shall be deemed to be effective as of April 6, 1917, and applicable from that date to all contracts or policies of insurance."

The Government, while conceding that all the conditions existed for revival of the insurance in the converted form and that plaintiff is entitled to benefits on that basis, contends that the insurance in the original form had not been allowed to lapse nor been canceled or reduced within the meaning of Section 305, and that hence it failed to meet one of the conditions essential to revival in that form. The Government contends that the uncollected compensation due on the date of total permanent disability must be applied as premiums on the twenty payment life insurance policy. On the other hand, the appellee asserts that he has a right to make claim and bring suit on any prior contract or policy, and if found entitled thereto, upon surrender of the subsequent policy, he shall be entitled to payments under the prior contract.

"It is manifest that under section 305 a veteran who has become totally and permanently disabled is entitled to payment under his war risk insurance if he has failed to collect compensation due him sufficient to pay the premium thereon" Berntsen v. U. S., 41 F. (2d) 663, 665 (C. C. A. 9).

The Circuit Court of Appeals for the Fifth Circuit said of Section 305 in U. S. v. Sellers, 75 F. (2d) 623, 625:

"This is not a provision for reinstatement, but a declaration that under the named circumstances the policy is not to be considered as

ever having lapsed, followed by a direction for its payment as a matured claim. The supposed lapse must have happened at a time when compensation was really due the soldier, and the death or total permanent disability which matures the policy must have occurred while the compensation remained uncollected. The thought is that the policy should not be held to have lapsed while the United States were owing the soldier enough to have paid his premiums, and that it should now be paid even though the compensation was collected after the maturity of the policy, the unpaid premiums being taken out of the insurance money."

Again, in U. S. v. Hendricksen, 53 F. (2d) 797, 799 (C. C. A. 10), it is said:

"A war risk insurance policy does not lapse for nonpayment of premiums, as long as the government fails to pay the soldier installments of compensation to which he is entitled under the ratings of the bureau. Nor is the purpose of the statute obscure; if the government had paid the compensation as and when due, the soldier would have been able to have paid his premiums. The statute provides that the unpaid premium shall be deducted from his insurance, and not from his compensation."

The above cases are authority to the effect that one or the other of the policies is valid and that the veteran may collect under one of them. In fact, the Government concedes the validity of the twenty payment life policy but argues that the insured had no right to elect under which policy he would demand payment. Presumably the original policy from the standpoint of premiums was the cheaper and, therefore, the application of the unpaid compensation to premiums thereon would be of greater benefit to the veteran.

We think the decision of this Court, in U. S. v. Arzner, 57 F. (2d) 488, 489, is decisive:

"The purpose of the amendment [to section 307] was to meet the situation that had arisen by reason of numerous holdings of the courts to the effect that the subsequent veterans' insurance policies were novations, and that, thereafter, recovery could not be had upon the original insurance and that ordinary principles of contract applied to the veterans' policies. * * * The obvious purpose of the amendment was to permit the veteran to present to a court and jury his claim that he was totally and permanently disabled during the life of his war risk insurance policy and to provide that if his contention was sustained by the court and jury he should recover under the terms of the original contract notwithstanding the fact that in the subsequent dealings with the Veterans' Bureau he had accepted some form of insurance in lieu of the original war risk insurance. By this legislation he was not required to jeopardize his rights under the subsequent contracts or policies in order to present his claim under the superseded war risk insurance. He could completely ignore the subsequent policies. They constituted no defense. If the judgment was in his favor in his suit on the original policy, however, he was

required to surrender any subsequent contract or policy before he was entitled to payment under the prior contract or policy."

The above-quoted case sets at rest the contentions of the government and is determinative of this appeal. There is no especial merit in the fact that Section 305 does not contain the word "converted", for that word is contained in Section 307.

In view of the fact that the original policy of insurance is held to have been in force and not lapsed, the appellee is entitled to a refund or credit for the premiums paid on the twenty payment life policy. The subsequent policy not being additional insurance, but a conversion of the original, which is held not lapsed, the insured actually received nothing for the premiums paid thereon and is entitled to credit therefore.

Judgment affirmed.

(Endorsed:) Opinion. Filed Sep. 8, 1936. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit

No. 8038

UNITED STATES OF AMERICA, APPELLANT

vs.

HARRY J. MADIGAN, APPELLEE

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this Cause be, and hereby is, affirmed.

(Endorsed:) Judgment. Filed and entered September 8, 1936. Paul P. O'Brien, Clerk.

I, Paul P. O'Brien, as clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing thirty-nine (39) pages, numbered from and including 1 to and including 39, to be a full, true, and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of Honorable J. Stanley Reed, Solicitor General of the United States, counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 2nd day of December, A. D. 1936.

[SEAL] PAUL P. O'BRIEN, *Clerk.*

U. S. GOVERNMENT PRINTING OFFICE: 1936

41 Supreme Court of the United States

Order allowing certiorari

Filed January 11, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] File No. 41, 102. U. S. Circuit Court of Appeals, Ninth Circuit. Term No. 562. The United States of America, petitioner, vs. Harry J. Madigan. Petition for a writ of certiorari and exhibit thereto. Filed December 8, 1936. Term No. 562, O. T. 1936.

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No. 562

In the Supreme Court of the United States

OCTOBER TERM, 1936

UNITED STATES OF AMERICA, PETITIONER

v.

HARRY J. MADIGAN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1936

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

HARRY J. MADIGAN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit entered in the above entitled case September 8, 1936.

OPINIONS BELOW

The District Court for the Southern District of California rendered no opinion. The opinion of the Circuit Court of Appeals is reported in 85 F. (2d) 609.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered September 8, 1936. The jurisdiction

of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether an insured who converted his insurance from a yearly renewable (war risk) term contract to a United States Government life insurance policy and later suffered a total permanent disability is entitled under Sections 305 and 307 of the World War Veterans' Act, 1924, as amended, to recover disability benefits under the yearly renewable term contract together with all premiums paid under the converted contract.

STATUTES INVOLVED

Section 305 of the World War Veterans' Act, 1924, as amended July 2, 1926, c. 723, 44 Stat. 799, 800 (U. S. C., Title 38, Sec. 516) provides, so far as pertinent, as follows:

> Where any person has heretofore allowed his insurance to lapse, or has canceled or reduced all or any part of such insurance, while suffering from a compensable disability for which compensation was not collected and dies or has died, or becomes or has become permanently and totally disabled and at the time of such death or permanent total disability was or is entitled to compensation remaining uncollected, then and in that event so much of his insurance as said

> uncollected compensation, computed in all cases at the rate provided by section 302 of the War Risk Insurance Act as amended December 24, 1919, would purchase if applied as premiums when due, shall not be considered as lapsed, canceled or reduced; and the United States Veterans' Bureau is hereby authorized and directed to pay to said soldier; or his beneficiaries, as the case may be, the amount of said insurance less the unpaid premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law: * * *.

Section 307 of the World War Veterans' Act, as amended by the Act of July 3, 1930, c. 849, 46 Stat. 1001, 1002 (U. S. C., Title 38, Sec. 518) provides as follows:

> All contracts or policies of insurance heretofore or hereafter issued, reinstated, or converted shall be incontestable from the date of issuance, reinstatement, or conversion, except for fraud, nonpayment of premiums, or on the ground that the applicant was not a member of the military or naval forces of the United States, and subject to the provisions of section 23: *Provided,* That the insured under such contract or policy may, without prejudicing his rights, elect to make claim to the bureau or to bring suit under section 19 of this Act on any prior contract or policy, and if found entitled thereto, shall, upon surrender of any subsequent contract or policy, be entitled to payments un-

> der the prior contract or policy: *Provided further,* That this section shall be deemed to be effective as of April 6, 1917, and applicable from that date to all contracts or policies of insurance.

Congressional Committee Reports and the other statutes mentioned herein are contained in the Appendix, *infra,* pp. 13–16.

STATEMENT

Harry J. Madigan, the respondent, brought this suit in the District Court of the United States for the Southern District of California to recover total permanent disability benefits under a contract of yearly renewable term insurance.

The case was tried before the court without a jury upon an agreed statement of facts stipulating that the plaintiff, while in the military service of the United States between July 15, 1917, and July 25, 1919, applied for and was granted war risk term insurance in the sum of $10,000; that on November 1, 1919, he converted the full amount of such insurance into a twenty-payment life policy of United States Government insurance and paid all premiums due on the latter policy until January 31, 1920, when it was allowed to lapse for nonpayment of further premiums; that he was suffering from a "compensable disability" on the date of the conversion (November 1, 1919) and also at the time when the twenty-payment life policy lapsed (January 31, 1920); that on June 6, 1925, the Veterans' Bureau rated the plaintiff as totally and

permanently disabled, and at that time he was entitled to disability compensation from the Government in the sum of $312.25, no part of which had been paid to him. (R. 9–10.)

The plaintiff sought to recover total permanent disability benefits under the original war risk term contract in preference to the twenty-payment life policy on the theory that under Section 305 of the World War Veterans' Act, 1924, as amended July 2, 1926, *supra,* and Section 307 of that Act, as amended July 3, 1930, *supra,* the insurance was subject to revival under both policies and that he was entitled to elect the one under which total permanent disability benefits should be paid. (R. 19–20.) He elected to claim under the original term insurance contract presumably because of its lower rate of premium which would enable a greater amount of insurance to be revived under it than under the twenty-payment life policy.

The defendant, while conceding that the conditions existed for revival of the converted (twenty-payment life) insurance and that plaintiff was entitled to benefits thereunder, requested the court to rule that the original yearly renewable term insurance was not subject to revival since it had been converted and had not been allowed to lapse or been cancelled or reduced within the meaning of Section 305, World War Veterans' Act, as amended, and thus that there was absent an essential condition to the revival of the term insurance and that Section

307, as amended, had no application. (R. 18–19, 20.)

The trial court made findings of fact in accordance with the stipulation and entered conclusions of law (R. 11–13) and judgment for the plaintiff (R. 13), awarding him total permanent disability benefits based upon a revival of so much of the insurance under the original contract as the amount of compensation ($312.25) remaining uncollected on the date of total permanent disability would have purchased if it had been applied to the payment of all premiums which would have been due under the original contract between the date of conversion and the date of total permanent disability. (R. 14.) Plaintiff was also allowed to recover all premiums which he had paid on the twenty-payment life insurance policy. (R. 15.) The defendant appealed from this judgment to the Circuit Court of Appeals for the Ninth Circuit (R. 24–27), assigning error *inter alia* to the trial court's denial of its request for a ruling that there had been no lapse, cancellation or reduction of the war risk term insurance within the meaning of Section 305, *supra,* (R. 25) and also to the trial court's ruling that the plaintiff had the right to elect to recover insurance benefits under his original policy by virtue of Section 307, *supra,* together with the premiums paid on the second policy (R. 26).

The Circuit Court of Appeals affirmed the judgment of the District Court, but the grounds upon

which it based its decision are not clearly apprehended. As we read the opinion two possible constructions are presented: (a) that Section 305 provides for the revival and payment of yearly renewable term insurance where total permanent disability occurs after conversion of such insurance to United States Government life insurance, or (b) that Section 305 standing alone may not be so construed but was amended by Section 307 to provide for such construction.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding (a) that under Section 305, World War Veterans' Act, 1924, as amended by the Act of July 2, 1926, yearly renewable term insurance may be matured by total permanent disability occurring after its conversion to a policy of United States Government life insurance, or (b) that Section 307, World War Veterans' Act, as amended by the Act of July 3, 1930, amended Section 305 of the Act to provide for the maturity of yearly renewable term insurance by total permanent disability occurring after its conversion to a policy of United States Government life insurance.

2. In affirming the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

The decision of the Circuit Court of Appeals is directly opposed to the long continued administrative practice of the Veterans Administration and

its predecessor, the Veterans' Bureau, which, according to the letter of the Administrator of Veterans' Affairs (Appendix, *infra*, p. 16), have consistently administered Section 305 of the World War Veterans' Act, 1924, and the earlier provisions for the revival of insurance embodied in Section 408 of the War Risk Insurance Act, *infra*, pp. 14–15, as containing no provisions, express or implied, for the revival of insurance under a yearly renewable term contract after it has been converted to a policy of United States Government life insurance. This practice, moreover, continued without change subsequent to the amendment of Section 307 by the Act of July 3, 1930, which was retroactive in effect.

While the amount involved in the instant case is relatively small, the effect of the decision would be of serious consequence to the Government. The Administrator of Veterans' Affairs states in his letter:

> A recent study of the records in a limited number of adjudicated cases involving converted cases indicates that there have been approximately 300 cases in which the facts were substantially similar to those in the Madigan case, and it is estimated that the insurance benefits payable in those cases, if that decision were followed, would exceed those which have been paid administratively by approximately $1,500,000 in the aggregate. There are now pending before the Veterans' Administration 686 claims

(both death and disability) for converted insurance involving an aggregate amount of approximately $3,500,000.

Moreover, there are at present 4,804 suits on contracts of yearly renewable term and United States Government life insurance pending in the courts, of which 428 involve claims under Section 305.[1]

Furthermore, it is submitted that the decision of the court below is contrary to the plain provisions and purposes of Section 305, *supra,* or involves an interpretation of Section 307, *supra,* apparently at variance with established principles of statutory construction.

Section 305 contains no express provision for the maturity of term insurance subsequent to its conversion. It provides specifically, as a condition precedent to the revival and maturity of insurance, that the insured "has * * * allowed his insurance to lapse, or has canceled or reduced" it. The words "lapse" and "canceled or reduced" used in Section 305 import a discontinuance of the insurance in whole or in part. Conversion implies the precise contrary, a continuance of insurance in a more permanent form. It was discontinuance of insurance, as a result of the nonpayment of compensation, which Section 305 was enacted to prevent. To include conversion by implication would

[1] It is a fair inference from past experience that many additional claims under Section 305 will be presented by amendments to pleadings in cases which do not at present embody them.

be to depart from the purpose of this section to avoid loss of insurance protection by veterans to whom disability compensation was due and unpaid and who, if payment had been made, might have applied such compensation to premiums on the insurance which was permitted to lapse or was cancelled or reduced. (See *United States* v. *Hendrickson,* 53 F. (2d) 797, 799 (C. C. A. 10th); *United States* v. *Sellers,* 75 F. (2d) 623, 625 (C. C. A. 5th), certiorari denied, 295 U. S. 763; and the House Committee Report, Appendix, *infra,* pp. 14–15). Obviously, the conversion of yearly renewable term insurance to a level premium form of United States Government life insurance is not an act attributable to the nonreceipt of compensation since it represents an assumption by the insured of an immediately higher premium obligation, nor does it involve a loss of insurance protection.

We submit that Section 307, as amended by the Act of July 3, 1930, *supra,* was not intended to amend Section 305. Section 307 was amended to permit recovery under a term contract shown to have matured by total permanent disability occurring during its life, despite subsequent conversion (*United States* v. *Arzner,* 287 U. S. 470). Here the total permanent disability occurred after the conversion of insurance at a time when only the converted contract was in force under Section 305. Section 307 was manifestly intended only to permit suit to enforce rights on the prior contract, the assertion of which otherwise would have been

barred, under the decisions of several courts, by estoppel or novation through the execution of the subsequent contract. (*United States* v. *Buzard*, 33 F. (2d) 883 (C. C. A. 9th); *Stevens* v. *United States*, 29 F. (2d) 904 (C. C. A. 8th); *United States* v. *Kusnierz*, 33 F. (2d) 887 (C. C. A. 9th).) Section 307 was not intended otherwise to confer upon the insured rights under the former contract which he did not already possess. No such intent was expressed in the Act, and, it is submitted, none may be implied from its language to provide so radical an extension of the scope of Section 305 beyond its original purpose. Such an interpretation would, indeed, be inconsistent with one of the conditions in Section 307, that the insured be "found entitled" to make claim or bring suit on the "prior contract or policy."

In any event it is submitted that since Congress has expressly stipulated in Section 305 the conditions for revival and maturity of insurance, such express legislation must control in the absence of subsequent legislation equally express, and is not to be overthrown by any mere inferences or implications to be found in Section 307 as subsequently enacted. (*Rosencrans* v. *United States*, 165 U. S. 257, 262.) Furthermore, such implications would be inconsistent with the Senate Committee Report made in connection with the adoption of this amendment, which confirms the interpretation urged by petitioner. (Appendix, *infra*, pp. 15–16).

Recent decisions regarding other phases of Section 305 show a marked tendency to interpret it so as to increase the Government's liability far beyond the limits adopted by long continued administrative practice.[2] Moreover, it has been held in *United States* v. *Weaver* (C. C. A. 4th), decided November 9, 1936, as yet unreported, that benefits provided by Section 305 are vested contractual rights within the protection of the Fifth Amendment and are, therefore, not subject to repeal or impairment. Thus it appears that legislation might be productive merely of increased uncertainty as to rights under this section. Therefore, it would seem that there now exists a manifest need for this Court's consideration of the scope of the section.

For this and for the reasons previously stated, it is respectfully submitted that this application for a writ of certiorari should be granted.

STANLEY REED,
Solicitor General.

DECEMBER 1936.

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[2] In *Skelton* v. *United States* (C. C. A. 10th), decided July 21, 1936, as yet unreported, rehearing granted September 10, 1936, it was held that Section 305 operates to revive term insurance after July 2, 1927, despite the limitation in Section 301 that "All yearly renewable term insurance shall cease on July 2, 1927, except when death or total permanent disability shall have occurred before July 2, 1927 * * *." In *United States* v. *Wilson*, 85 F. (2d) 444 (C. C. A. 9th), it was held that despite the proviso added to Section 305 by the amendment of July 2, 1926, restricting payment of insurance thereafter revived "only" to the insured and specified persons of close relationship, recovery by a personal representative was permissible.

APPENDIX

PERTINENT STATUTES AND COMMITTEE REPORTS

SEC. 400. That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000, upon the payment of the premiums as hereinafter provided. (Act of October 6, 1917, c. 105, 40 Stat. 409.)

SEC. 404. That during the period of war and thereafter until converted the insurance shall be term insurance for successive terms of one year each. Not later than five years after the date of the termination of the war as declared by proclamation of the President of the United States, the term insurance shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty payment life, endowment maturing at age sixty-two and into other usual forms of insurance and shall

prescribe the time and method of payment of the premiums thereon, but payments of premiums in advance shall not be required for periods of more than one month each and may be deducted from the pay or deposit of the insured or be otherwise made at his election. (Act of October 6, 1917, c. 105, 40 Stat. 410.)

SEC. 408. * * * That where any soldier has heretofore allowed his insurance to lapse, while suffering from wounds or disease suffered or contracted in line of service, and was at the time he allowed his said policy to lapse entitled to compensation on account thereof in a sum equal to or in excess of the amount due from him in premiums on his said insurance, and has since died from said wounds or disease without collecting or making claim for said compensation, or being allowed to reinstate his said policy on account of his physical condition, then and in that event said policy shall not be considered as lapsed, and the Veterans' Bureau is hereby authorized and directed to pay to the beneficiaries of said soldier under said policy the amount of said insurance less the premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law. (Act of August 9, 1921, c. 57, Sec. 27, 42 Stat. 156.)

In the House Committee Report made in connection with this Act, it is said (H. Rep. No. 104, 67th Cong., 1st Sess., p. 10):

It would appear to be equitable and fair when it is remembered that as a matter of fact in most of the instances the reason the disabled soldier failed to keep up his insurance was that he was short of funds and it took the Government some time to investi-

> gate and grant his compensation, and that because of this financial stringency he allowed his insurance to lapse.

This section was amended by the Act of March 4, 1923, c. 291, Sec. 7, 42 Stat. 1521, 1525–1526, to read as follows:

> SEC. 408. * * * That where any soldier has heretofore allowed his insurance to lapse, while suffering from wounds or disease suffered or contracted in line of service, and was at the time he allowed his insurance to lapse entitled to compensation on account thereof in a sum equal to or in excess of the amount due from him in premiums on his said insurance, and dies or has died from said wounds or disease, or becomes or has become permanently and totally disabled by reason thereof, without collecting said compensation, and at the time of such death or permanent total disability had or has sufficient uncollected compensation to pay all unpaid premiums, then and in that event said policy shall not be considered as lapsed, and the United States Veterans' Bureau is hereby authorized and directed to pay to the said soldier or his beneficiaries under said policy the amount of said insurance less the premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law: * * *.

In the Senate Committee Report made in connection with the Act of July 3, 1930, amending Section 307 of the World War Veterans' Act, 1924, it is said (S. Rep. No. 1128, 71st Cong., 2d Sess., p. 10):

> Further provision is made permitting the insured to elect after a reinstatement or conversion to go back to some prior contract and

claim rights thereunder; and if he proves himself entitled to such rights, upon surrender of the latter contract or contracts, to be paid under the prior contract. The purpose is to prohibit the raising of estoppel against the claimant either in or out of the courts because of his reinstatement or conversion of his insurance. * * * Recovery, however, can only be effected upon one of the contracts or policies. The effect of the present practice of the bureau in raising estoppel is to penalize the man who pays his premiums or tries to continue all or a part of his insurance in force.

Letter from the Administrator of Veterans' Affairs to the Solicitor General:

Office of
The Administrator of
Veterans Affairs

VETERANS ADMINISTRATION,
Washington, December 5, 1936.

United States of America *vs.* Harry J. Madigan

The Honorable, The SOLICITOR GENERAL,
Department of Justice,
Washington, D. C.

SIR: I am responding to your letter of December 3, 1936, relative to steps which the Department of Justice proposes to take in the case of United States of America, Appellant, vs. Harry J. Madigan, Appellee, United States Circuit Court of Appeals, Ninth Circuit, No. 8038, wherein you request that you be furnished some estimate of the increased liability under Section 305 revivals, if the rule in the Madigan case should be followed, also a statement of the general administrative policy which the Veterans' Bureau, now the Veterans' Administration, has followed with reference to cases of this type.

The Veterans' Administration and its predecessors have awarded insurance (both term and converted) under Section 305, World War Veterans' Act, and Section 408, War Risk Insurance Act, in more than 12,000 cases. The average amount of term insurance saved from lapse in such cases is approximately $7,000. A review of a portion of these cases reveals that converted insurance is involved in a relatively small proportion of them and that the average amount of converted insurance prevented from lapse is approximately $2,000. A recent study of the records in a limited number of adjudicated cases involving converted cases indicates that there have been approximately 300 cases in which the facts were substantially similar to those in the Madigan case, and it is estimated that the insurance benefits payable in those cases, if that decision were followed, would exceed those which have been paid administratively by approximately $1,500,000 in the aggregate. There are now pending before the Veterans' Administration 686 claims (both death and disability) for converted insurance involving an aggregate amount of approximately $3,500,000.

While the point raised in *United States* v. *Madigan,* 85 F. (2d) 609 (C. C. A. 9th), has not been the subject of a specific formal administrative decision, it has been the consistent practice of the Veterans' Administration and its predecessors to administer Section 305, World War Veterans' Act, 1924, and the preceding provisions of Section 408, War Risk Insurance Act, on the theory that they contained no provisions, express or implied, for revival of insurance under a yearly renewable term contract after it had been converted to a policy of

United States Government life insurance. Moreover, this practice continued without change subsequent to the amendment to Section 307, World War Veterans' Act of the Act of July 3, 1930, the view being held that Congress did not intend by that Act to amend Section 305, World War Veterans' Act.

It thus appears that the decision of the Circuit Court of Appeals for the Ninth Circuit in the *Madigan* case is contrary to the long continued administrative practice.

Although the records of the Veterans' Administration do not permit of an exact estimate of the total additional costs, including those arising in future claims, which would result under the rule laid down in the *Madigan* case, sufficient data is at hand to show conclusively that the additional liability thereby incurred might be substantial.

The question of law involved in the *Madigan* case would, therefore, seem to be important not only because of the desirability of proper statutory construction, but also because it may involve a substantial liability to the Government which, under the indicated practice of this Administration, has not heretofore been considered to exist.

I hope, therefore, that it will be possible to obtain a final determination of the question by the Supreme Court. If the Veterans' Administration may be of any further assistance to your Department, you may be assured that every effort will be made to cooperate.

Respectfully,

/s/ Frank T. Hines

FRANK T. HINES,

Administrator.

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No. 562

In the Supreme Court of the United States

OCTOBER TERM, 1936

UNITED STATES OF AMERICA, PETITIONER

v.

HARRY J. MADIGAN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The District Court for the Southern District of California rendered no opinion. The opinion of the Circuit Court of Appeals (R. 18–21) is reported in 85 F. (2d) 609.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered September 8, 1936. (R. 21.) The petition for a writ of certiorari was filed December 8, 1936, and granted January 11, 1937. (R. 22.) The jurisdiction of this Court is conferred by

Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether an insured who converted his insurance from a yearly renewable (war risk) term contract to a United States Government life insurance policy, and later suffered a total permanent disability, is entitled under Sections 305 and 307 of the World War Veterans' Act, 1924, as amended, to recover disability benefits under the yearly renewable term contract, together with all premiums paid under the converted contract.

STATUTES INVOLVED

The statutes involved are printed in the Appendix, *infra*, p. 22 et seq.

STATEMENT

The respondent, Harry J. Madigan, hereinafter called the plaintiff, brought this suit in the District Court of the United States for the Southern District of California to recover total permanent disability benefits under a contract of war risk term insurance.

The case was tried before the court, without a jury, upon an agreed statement of facts stipulating, in substance, that the plaintiff, while in the military service of the United States between July 15, 1917, and July 25, 1919, applied for and was granted war risk term insurance in the sum of

$10,000; that on November 1, 1919, he converted the full amount of such insurance into a twenty-payment life policy of United States Government insurance, and paid all premiums due on the latter policy until January 31, 1920, when it was allowed to lapse for nonpayment of further premiums; that he was suffering from a "compensable disability" on the date of the conversion (November 1, 1919) and also at the time when the twenty-payment life policy lapsed (January 31, 1920); that on June 6, 1925, the United States Veterans' Bureau rated the plaintiff as totally and permanently disabled, and at that time he was entitled to disability compensation from the Government in the sum of $312.25, no part of which had then been paid to him. (R. 5.)

The plaintiff sought to recover total permanent disability benefits under the original war risk term contract in preference to the twenty-payment life policy, apparently on the theory that under Section 305 of the World War Veterans' Act, 1924, as amended July 2, 1926, *infra*, pp. 29–30, and Section 307 of that Act, as amended July 3, 1930, *infra*, p. 36, the insurance was subject to revival and maturity under either policy, and that he was entitled to elect the one under which he should be paid. (R. 11, 19.) He elected to claim under the original term contract, presumably because of its lower rate of premium which would enable a

greater amount of insurance to be revived under it than under the twenty-payment life policy. (R. 20.)[1]

The United States, while conceding that the conditions existed for revival and maturity of the insurance under the twenty-payment life policy, requested the court to rule that the insurance was not subject to revival under the original term contract since conversion did not constitute a lapse, cancellation or reduction of insurance within the meaning of Section 305 of the World War Veterans' Act, as amended, and thus that there was absent an essential condition precedent to such revival; and that Section 307, as amended, had no application. (R. 10, 19, 20.)

The trial court, upon the basis of the agreed statement of facts (R. 5), made findings (R. 6) and entered conclusions of law (R. 7) and judgment for the plaintiff (R. 7–8), awarding him total permanent disability benefits based upon the theory that there had been a revival of so much of the insurance under the original contract as the amount of compensation ($312.25) remaining uncollected on the date of total permanent disability would have purchased if it had been applied to the payment of all premiums which would have been due

[1] Under the twenty-payment life policy, the net commuted value of insurance subject to revival has been computed as $2,170.92. (R. 10.) The $312.25 of uncollected compensation would purchase insurance in the net commuted value of $6,469.73 under the term contract, if plaintiff's theory were sound.

under the original contract between the date of conversion and the date of total permanent disability. Plaintiff was also allowed to recover all premiums which he had paid on the twenty-payment life insurance policy.[2]

The Government appealed from this judgment to the Circuit Court of Appeals for the Ninth Circuit (R. 13–15), assigning error *inter alia* to the trial court's denial of its request for a ruling that there had been no lapse, cancellation or reduction of the war risk term insurance within the meaning of Section 305, *infra*, pp. 29–30 (R. 14), and also to the trial court's ruling that the plaintiff had the right to elect to recover insurance benefits under his original policy by virtue of Section 307, *infra*, p. 36, together with the premiums paid on the second policy (R. 15).

The Circuit Court of Appeals affirmed the judgment of the District Court (R. 21), but the grounds upon which it based its decision appear uncertain.

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[2] The Government requested findings of fact and conclusions of law, moved for judgment in its favor, and excepted to the overruling of its motion and to the conclusions of law entered by the trial court. (R. 9–10, 11.) All of these proceedings were incorporated in a bill of exceptions, which was signed by the trial court within the term, as duly extended by successive orders (R. 11–13), although the questions involved are presented by the record proper, and subject to review without bill of exceptions. *Supervisors* v. *Kennicott*, 103 U. S. 554, 556; *United States* v. *La Franca*, 282 U. S. 568, 570; *United States* v. *Huie*, 73 F. (2d) 305 (C. C. A. 5th).

As we read the opinion (R. 18–21), two possible constructions thereof are presented: (a) that Section 305 provides for the revival and payment of yearly renewable term insurance where total permanent disability occurs after conversion of such insurance into a United States Government life insurance policy; or (b) that if Section 305, standing alone, may not be so construed, it was in some way amended by Section 307 to provide for such an interpretation.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding (a) that, under Section 305 of the World War Veterans' Act, 1924, as amended by the Act of July 2, 1926, yearly renewable term insurance may be matured by total permanent disability occurring after its conversion to a policy of United States Government life insurance, or (b) that Section 307 of the World War Veterans' Act, as amended by the Act of July 3, 1930, amended Section 305 of the Act to provide for the maturity of yearly renewable term insurance by total permanent disability occurring after its conversion to a policy of United States Government life insurance.

2. In affirming the judgment of the District Court.

SUMMARY OF ARGUMENT

1. Section 305 of the World War Veterans' Act, 1924, as amended, provides for revival and maturity of lapsed, canceled or reduced insurance.

This section has no application to yearly renewable term insurance after its *conversion* into United States Government life insurance. Conversion is not mentioned. The purpose of Congress is plainly limited to the restoration of insurance protection to those who had lost it as a result presumably of nonpayment by the Government of disability compensation. Conversion involves continuance, not loss, of insurance protection, requires the payment of a higher rate of premium, and thus could not be attributable to nonpayment of compensation. Nor could any loss of protection under the term contract, which may have been due to the insured's not having reinstated it after conversion, be attributable to nonpayment of compensation, for such reinstatements were prevented by administrative regulations in any event. Moreover, Congress clearly did not intend to award an insured benefits which he failed to secure merely because of an unfortunate determination as to the type of insurance which he selected.

Furthermore, the practice of Government officials charged with the enforcement of the statutory provisions for revival of insurance has for many years been consistently in accord with the interpretation urged here. Several reenactments of those provisions, without any change indicative of a disapproval of such interpretation, indicate legislative approval amounting to a reenactment of the provisions as so interpreted.

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2. Section 307 of the World War Veterans' Act, as amended by the Act of July 3, 1930, contains no express provision for revival of insurance, and no intent to make such provision may be implied from its language. That section was designed merely to remove the defense of estoppel or novation, which had been held by several courts to bar claims for permanent and total disability benefits accrued under a prior contract of insurance but presented after reinstatement or conversion. *Cf. United States* v. *Arzner,* 287 U. S. 470. It was not intended to confer upon an insured basic rights under the prior contract which he did not otherwise possess. In the instant case there is no claim for benefits accruing prior to conversion, and Section 307 is therefore of no relevance. The language of the Act is free from doubt, and resort may not be had to Section 305, a prior enactment, in order to create an ambiguity. Such rights, moreover, could arise with respect to revival of insurance only upon the theory of an implied amendment of the provisions of Section 305. But this would be opposed to the well settled rule that amendments by implication are not favored, and are not to be declared unless no other construction is reasonable. In the instant case no repugnancy whatever exists between the provisions of the respective statutes in the absence of an interpretation wholly inconsistent with the evident purpose of each.

ARGUMENT

I

THE PROVISIONS FOR REVIVAL AND MATURITY OF LAPSED, CANCELED OR REDUCED INSURANCE CONTAINED IN SECTION 305 OF THE WORLD WAR VETERANS' ACT, AS AMENDED, ARE NOT APPLICABLE TO YEARLY RENEWABLE TERM INSURANCE AFTER ITS CONVERSION INTO UNITED STATES GOVERNMENT LIFE INSURANCE

Section 305 of the World War Veterans' Act, as amended, *infra*, pp. 29–30, provides, in effect, that if any person who was insured under that Act, or its predecessor, the War Risk Insurance Act, *infra*, pp. 22–23, allowed his insurance to lapse, or canceled or reduced it while suffering from a disability for which compensation was due under other provisions of those Acts, but had not been paid to him, and if he later died or became permanently and totally disabled at a time when compensation remained due and unpaid, then so much of his insurance as the compensation due at the time of his death or permanent and total disability would have kept in force from the date of the lapse, cancellation or reduction, if applied to the payment of premiums, shall not be considered as lapsed, canceled or reduced, and shall be paid after deducting the unpaid premiums and interest thereon.

This section contains no provision, in the event of conversion of the insurance from one form of contract to another, for revival under the former contract, and it is submitted that no such provision may be found by implication. The sole purpose

of Congress, as disclosed on the face of the section, was to prevent loss of insurance protection which was presumed to have resulted from nonpayment by the Government of disability compensation due the insured under other statutory provisions.

The section provides specifically, as a condition precedent to the revival, that the insured "allowed his insurance to lapse, or has canceled or reduced" it. The words "lapse" and "canceled or reduced" import a loss of the insurance in whole or in part. Conversion implies the precise contrary—a continuance of the insurance in another form.

Furthermore, this section is expressly applicable only to cases where lapse, cancellation or reduction occurred while the insured was "suffering from a compensable disability for which compensation was not collected", and where he became permanently and totally disabled, or died, while some or all of the compensation due him remained unpaid. These provisions were manifestly based on the theory that if payment of the compensation had been begun by the Government prior to lapse, cancellation or reduction of the insurance and had been continued, the insured would have received funds sufficient to maintain his insurance in force continuously, in whole or in part, until maturity by permanent total disability or death, and would have applied them to that purpose, or if payment had been made subsequent to lapse, cancellation or reduction, that he would have used the money to

reinstate his insurance under Section 408, War Risk Insurance Act, *infra,* pp. 23–26, or Section 304, World War Veterans' Act, 1924, as amended, *infra,* pp. 28–29. In other words, his failure to maintain or reinstate his insurance was presumed to have been due to lack of funds which the Government had failed in its duty of providing. Congress, therefore, proposed to restore the insurance protection thus lost or, in other words, to do for the insured what he could, and presumably would, have done for himself if he had received his compensation. However, there was no intent to revive the insurance if the original loss, by lapse, cancellation or reduction had occurred at a time when the Government was not in default in the payment of compensation due the insured. Where the insured had originally abandoned his insurance for reasons other than nonpayment of compensation, Congress was evidently unwilling to presume that a subsequent default in payment of compensation would be responsible for his failure to reinstate the insurance.

It is submitted that revival of yearly renewable term insurance after conversion to United States Government life insurance, sought by the plaintiff here, is outside the purpose of Section 305. In the first place, conversion does not in itself involve loss of insurance protection (as previously stated) and is not attributable to nonpayment of compensation since it involves the payment of a higher

premium. Furthermore, the reinstatement of term insurance after its conversion was prohibited by regulation (see letter of the Administrator of Veterans' Affairs, dated February 11, 1937, *infra*, pp. 40–42) and, therefore, any loss of insurance which may have been due to his not having reinstated his term contract after the lapse of the converted contract could not have been due to the nonpayment of his compensation. In other words, the plaintiff is seeking through Section 305 a benefit which he could not have obtained for himself if all compensation due him had been timely paid.

It is true that under the construction urged by the Government the plaintiff is granted less than he would have received if he had allowed his insurance to lapse on November 1, 1919, instead of converting it. This is true because the amount of insurance revived by any given sum of uncollected compensation varies with the premium rate of the insurance revived, for the statute specifically protects against lapse only "so much of *his* [the veteran's] insurance as said uncollected compensation * * * would purchase if *applied as premiums when due.*" Of course the premium rate varies with the form of insurance and particularly in the case of yearly renewable term insurance, with the age of the insured.

Subsequent events have proved unfortunate the election made by the plaintiff as to the form in which to continue his insurance after November

1, 1919. But the form of insurance was optional, the choice dependent upon individual requirements and inclinations, and the advantages or disadvantages of any particular form largely dependent upon subsequent events. Any insured who selects a policy of high premium rate may be said to make an unfortunate choice as to the form of insurance if such policy matures by disability or death within a few years, since the benefit does not exceed that which may be purchased by a lesser premium. But exactly the opposite is true if the maturity of the policy is long deferred.

We submit that it is quite clear that in the enactment of Section 305, Congress intended to protect an insured only against the loss of insurance resulting from the nonpayment of compensation and that it did not intend to award additional benefits which a more fortunate selection of insurance of a lower premium rate would have made available.

Moreover, there is no more reason why he should be granted the benefits which he would have received if he had elected to lapse his term insurance on November 1, 1919, than for granting him the greater or lesser benefits to which he would have been entitled had he elected to follow some other course.[3]

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[3]As one of many possible examples, if instead of converting to a twenty-payment life policy (as he did) he had applied the funds represented by the premiums which he paid, to a continuance of yearly renewable term insurance, the amount of such insurance subject to revival would have been even larger than the sum which he now seeks.

The Government's contention as to the limited purpose of Section 305 is supported both by opinions of Circuit Courts of Appeals and by the legislative history and long continued administrative interpretation of the statutory provisions for revival and maturity of insurance from the time they were originally enacted.

In *United States* v. *Hendrickson*, 53 F. (2d) 797, 799 (C. C. A. 10th), it is said of that section:

> This language is clear, * * *. A war risk insurance policy does not lapse for nonpayment of premiums, as long as the government fails to pay the soldier installments of compensation to which he is entitled under the ratings of the bureau. Nor is the purpose of the statute obscure; if the government had paid the compensation as and when due, the soldier would have been able to have paid his premiums.

A substantially similar statement appears in *United States* v. *Sellers*, 75 F. (2d) 623, 625 (C. C. A. 5th), certiorari denied, 295 U. S. 763.[4]

The first provisions for revival and maturity of insurance were contained in Section 408 of the War Risk Insurance Act, as enacted by the Act of August 9, 1921, *infra*, pp. 23–26, which provided for

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[4] The court below cited these cases and *Berntsen* v. *United States*, 41 F. (2d) 663 (C. C. A. 9th) in support of its decision. (R. 19–20.) None of these cases presented the same question for decision as that involved herein, as none of them concerned converted insurance at all, and insofar as the opinions have application we submit that they support the Government's interpretation of Section 305.

the revival and maturity of lapsed insurance in the event of death, and also for reinstatement of lapsed insurance. In the House Committee Report, *infra*, pp. 26–27, it was said of this enactment:

> It would appear to be equitable and fair when it is remembered that as a matter of fact in most of the instances the reason the disabled soldier failed to keep up his insurance was that he was short of funds and it took the Government some time to investigate and grant his compensation, and that because of this financial stringency he allowed his insurance to lapse.[5]

The first amendment of this section by the Act of March 4, 1923, *infra*, pp. 23–26, provided for revival and maturity in the event of total permanent disability, as well as death, and made other changes. Provisions for revival and maturity were enacted in amended form in Section 305 of the World War Veterans' Act, 1924, *infra*, pp. 29–30.[6] No change in the original purpose is indicated in any of these amendments.

The Act of July 2, 1926, *infra*, pp. 29–30, amended Section 305 by providing for revival and maturity not only of insurance which had been allowed to

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[5] This report was made prior to the insertion of the provisions for revival by amendment from the floor of the House, *infra*, p. 27. But it is manifest that the language quoted above is as applicable to such provisions as to those for reinstatement.

[6] Provisions for reinstatement previously contained in Section 408 of the War Risk Insurance Act were placed in Section 304 of the World War Veterans' Act, *infra*, pp. 28–29.

lapse, but also that which had been canceled or reduced. It appears by the Committee Reports, *infra*, pp. 30-31, 32, and Hearings, *infra*, pp. 31-32, which preceded the enactment of this amendment, that its purpose was to overcome a ruling of the Comptroller General, *infra*, pp. 32-36 to the effect that so much of a veteran's insurance as had been canceled or reduced was not subject to revival under Section 305, as originally enacted, because cancellation or reduction, which necessarily involved affirmative action on the part of the insured, did not come within the meaning of the word "lapse", which involved only inaction. The Director of the Veterans' Bureau made a statement before the Senate Finance Committee, *infra*, pp. 31-32, in which he expressed approval of the amendment as embodying that purpose. No other purpose was discussed or suggested. Clearly, there was no intention here to extend the scope of the provisions in question beyond their original purpose of merely restoring insurance protection which may have been lost due to nonpayment of compensation. Moreover, the latest amendment of this section by the Act of 1928, *infra*, p. 30, is equally devoid of any suggestion of change in that respect.

Furthermore, the practice of the Government officials charged with the enforcement of the provisions in question has, from the beginning and in reference to numerous cases, been consistently in accord with the construction urged by the Government here. (See letter of Administrator of Vet-

erans' Affairs, dated December 5, 1936, *infra*, pp. 38–40.) This fact alone is sufficient to entitle that construction to the highest respect if it were otherwise doubtful (*Norwegian Nitrogen Products Co. v. United States*, 288 U. S. 294, 315; *United States v. Jackson*, 280 U. S. 183, 193; *Logan v. Davis*, 233 U. S. 613, 627; *Hastings etc. Railroad Co. v. Whitney*, 132 U. S. 357, 366; *Brown v. United States*, 113 U. S. 568, 571; *United States v. Moore*, 95 U. S. 760, 763), and it is further submitted that the four reenactments of those provisions without any change indicative of a disapproval of that construction, constitute a legislative adoption of it. *United States v. G. Falk & Brother*, 204 U. S. 143, 152; *United States v. Hermanos y Compania*, 209 U. S. 337, 339; *Johnson v. Manhattan Ry Co.*, 289 U. S. 479, 500; *New Haven R. R. v. Interstate Com. Com.*, 200 U. S. 361, 401–402; *Komada v. United States*, 215 U. S. 392, 396; *National Lead Co. v. United States*, 252 U. S. 140, 145–147.

II

SECTION 307 OF THE WORLD WAR VETERANS' ACT, AS AMENDED BY THE ACT OF JULY 3, 1930, DOES NOT EXTEND THE SCOPE OF THE PROVISIONS IN SECTION 305 FOR REVIVAL OF LAPSED, CANCELED, OR REDUCED INSURANCE TO PERMIT AN INSURED TO ELECT REVIVAL OF INSURANCE UNDER THE ORIGINAL CONTRACT AFTER ITS CONVERSION

Section 307 of the World War Veterans' Act was amended by the Act of July 3, 1930, *infra*, p. 36,

by adding a provision permitting an insured who had reinstated or converted his insurance to claim or bring suit on the prior contract, and *"if found entitled thereto"* to recover benefits under such contract upon the surrender of the subsequent contract or policy.

It is submitted that this Act was directed solely to permitting recovery of disability benefits under the prior contract where the claim is based upon the existence of total permanent disability while that contract was in force, and not where such disability did not occur until after it had terminated by lapse due to nonpayment of premiums or, as in the instant case, by conversion into another form of insurance. This is made clear by the background of the 1930 Act.

There had been several decisions in suits to recover total permanent disability benefits under contracts of insurance after the insurance had been converted into another form of contract or been allowed to lapse and had been reinstated, in each of which the plaintiff had based his claim upon total permanent disability alleged to have existed prior to the lapse or conversion. Since either the reinstatement or conversion was necessarily effected upon the mutual understanding of the Government and the insured that the latter was not totally permanently disabled at the time of such reinstatement or conversion, it was held that he was barred from recovery upon the ground of es-

toppel by contract or novation. (*United States* v. *Buzard*, 33 F. (2d) 883 (C. C. A. 9th); *Stevens* v. *United States*, 29 F. (2d) 904 (C. C. A. 8th); *United States* v. *Kusnierz*, 33 F. (2d) 887 (C. C. A. 9th).)

It was for the purpose of overcoming those decisions that the amendment of Section 307 was enacted. That purpose is expressly declared in the Senate Committee Report which accompanied the Act (*infra*, pp. 36–37), and is recognized in the opinion of this Court in *United States* v. *Arzner*, 287 U. S. 470.[7] Since each of the above decisions related to a claim of total permanent disability during the life of the prior contract and prior to reinstatement or conversion, it is not readily apparent upon what ground it could be urged that legislation designed to overcome them would be applicable to a case like the one at bar where the total permanent disability did not occur until several years after the prior policy had terminated by conversion and where, therefore, no question of estoppel is involved.

The Act in question was manifestly intended only to permit a claim or suit by an insured to enforce rights under the prior contract the asser-

[7] The court below relied upon its own decision in the *Arzner* case, which was affirmed by this Court, but there the total and permanent disability occurred prior to conversion at a time when the term insurance contract was in force, and the only question presented was whether the surrender of the converted policy for cash constituted a bar to the recovery of disability benefits under the earlier term contract.

tion of which might otherwise have been barred by estoppel or novation. It was not intended otherwise to confer upon the insured rights under the former contract which he did not already possess or to alter the terms of that contract in any respect. Indeed the words "if found entitled thereto" clearly disclose the intention of Congress in this respect.

If the plaintiff in the instant case had claimed that his total permanent disability existed during the life of the original term insurance contract, that is, prior to conversion, he could have claimed disability benefits under that contract by virtue of this Act. The fact that he had subsequently entered into a new contract would have constituted no bar to his suit. But where, as here, his claim is based upon total permanent disability occurring after his original contract had terminated by conversion, and when, as previously stated, the converted contract alone was in force under Section 305, it is submitted that Section 307, as amended, has no application for any purpose. The language of the Act itself is free from doubt on this point, and resort may not be had to prior enactments of Section 305 in order to create an ambiguity. *Hamilton* v. *Rathbone*, 175 U. S. 414, 421.

Even if the meaning of the Act were doubtful, a construction in favor of a right to revive the prior contract could only be based upon the theory that the Act of 1930 amended Section 305 by implication. But that would be opposed to the well

settled rule of statutory construction that amendments by implication are not favored, and an intention to amend will not be imputed to Congress unless the statutes involved admit of no other construction. *Rosencrans* v. *United States,* 165 U. S. 257, 262; *Frost* v. *Wenie,* 157 U. S. 46, 58; *Washington* v. *Miller,* 235 U. S. 422, 428; *United States* v. *Healey,* 160 U. S. 136, 147; *United States* v. *Burroughs,* 289 U. S. 159, 164. That rule is, moreover, especially applicable where, as here, the amendment would involve a distinct departure from a long established policy. *United States* v. *Munday,* 222 U. S. 175, 182; *Ibanez* v. *Hongkong Banking Corp.,* 246 U. S. 621, 626.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed.

STANLEY REED,
Solicitor General.
JULIUS C. MARTIN,
Director, Bureau of War Risk Litigation.
WILBUR C. PICKETT,
FENDALL MARBURY,
Special Assistants to the Attorney General.
W. MARVIN SMITH,
Attorney.

FEBRUARY 1937.

APPENDIX

The first authority to grant war risk insurance is contained in the Act of October 6, 1917, Sec. 2 (c. 105, 40 Stat. 398, 409, 410), amending the War Risk Insurance Act by adding five new sections, providing, in part:

> SEC. 400. That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000, upon the payment of the premiums as hereinafter provided.
>
> * * * * *
>
> SEC. 402. That the director, subject to the general direction of the Secretary of the Treasury, shall promptly determine upon and publish the full and exact terms and conditions of such contract of insurance. * * * Provisions for maturity at certain ages, for continuous installments during the life of the insured or beneficiaries, or both, for cash, loan, paid-up and extended values, dividends from gains and savings,

and such other provisions for the protection and advantage of and for alternative benefits to the insured and the beneficiaries as may be found to be reasonable and practicable, may be provided for in the contract of insurance, or from time to time by regulations. * * *

SEC. 403. * * * The premium rates shall be the net rates based upon the American Experience Table of Mortality and interest at three and one-half per centum per annum.

SEC. 404. That during the period of war and thereafter until converted the insurance shall be term insurance for successive terms of one year each. Not later than five years after the date of the termination of the war as declared by proclamation of the President of the United States, the term insurance shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty payment life, endowment maturing at age sixty-two and into other usual forms of insurance and shall prescribe the time and method of payment of the premiums thereon, * * *.[1]

Section 408 was added to the War Risk Insurance Act by the Act of August 9, 1921, Sec. 27 (c. 57, 42 Stat. 147, 156–157), and was amended by

[1] The time limit for conversion provided in Section 404 was extended by successive enactments to July 2, 1927. World War Veterans' Act, June 7, 1924, Sec. 301 (c. 320, 43 Stat. 607, 624): Act of June 2, 1926 (c. 449, 44 Stat. 686–687), amending Section 301 of the World War Veterans' Act 1924.

the Act of March 4, 1923, Sec. 7 (c. 291, 42 Stat. 1521, 1525-1526) to provide:

> SEC. 408. In the event that all provisions of the rules and regulations other than the requirements as to the physical condition of the applicant for insurance have been complied with, an application for reinstatement of lapsed or canceled yearly renewable term insurance or application for United States Government life insurance (converted insurance) hereafter made may be approved: *Provided*, That the applicant's disability is the result of an injury or disease, or of an aggravation thereof, suffered or contracted in the active military or naval service during the World War: *Provided further*, That the applicant during his lifetime submits proof satisfactory to the director showing the service origin of the disability or aggravation thereof and that the applicant is not totally and permanently disabled. As a condition, however, to the acceptance of an application for the reinstatement of lapsed or canceled yearly renewable term insurance or United States Government life insurance (converted insurance) the applicant shall be required to pay all the back monthly premiums which would have become payable if such insurance had not lapsed, together with interest at the rate of 5 per centum per annum compounded annually on each premium from the date said premium is due by the terms of the policy: *Provided further*, That where any soldier has heretofore allowed his insurance to lapse, while suffering from wounds or disease suffered or contracted in line of service, and was at the time he allowed his [said policy] *insurance* to lapse entitled to compensation on account thereof in a sum equal to or in excess of the

amount due from him in premiums on his said insurance, and [has since died] *dies or has died* from said wounds or disease, *or becomes or has become permanently and totally disabled by reason thereof,* without collecting [or making claim for] said compensation, [or being allowed to reinstate his said policy on account of his physical condition] *and at the time of such death or permanent total disability had or has sufficient uncollected compensation to pay all unpaid premiums,* then and in that event said policy shall not be considered as lapsed, and the *United States* Veterans' Bureau is hereby authorized and directed to pay to the *said soldier or his* beneficiaries [of said soldier] under said policy the amount of said insurance less the premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law: *Provided further, That where any soldier has heretofore allowed his insurance to lapse, while suffering from wounds or disease contracted in line of service, and has applied for reinstatement thereof in whole or in part, and where at the time of such application he was not totally and permanently disabled, and where he was not allowed to reinstate because of health condition other than total permanent disability, and where said soldier has since died from said wounds or disease or has become permanently and totally disabled by reason thereof, then and in that event the United States Veterans' Bureau is hereby authorized and directed to pay to said soldier or his beneficiaries the amount of insurance attempted to be reinstated less the premiums and interest thereon at 5 per centum per annum compounded annually in installments*

as provided by law: Provided further, That the Comptroller General of the United States is hereby authorized and directed to allow credit in the accounts of the disbursing clerk of the United States Veterans' Bureau for all payments of insurance installments hereafter made, without verification of the deduction on the pay rolls, of such premiums as may have accrued prior to January 1, 1921, while the insured was in service. [Italics represent words added by the amendatory Act. Words in the prior Act, omitted by amendment, are enclosed in brackets.]

In the House Committee Report made in connection with the Act of August 9, 1921 (H. Rep. No. 104, 67th Cong., 1st Sess., p. 10) it is said:

> Section 26 for the first time makes provision for the reinstatement of lapsed insurance under certain conditions. Heretofore the question of the reinstatement of lapsed insurance has been a matter entirely under the rules and regulations of the War Risk Insurance Bureau. The question is simply this: Shall persons suffering from injury or disease resulting from the World War, who are not permanently and totally disabled, be permitted to reinstate their lapsed or canceled term insurance or Government life insurance (converted insurance) providing they conform to all the rules, regulations, and requirements relative to the reinstatement, except as to the condition of their health? Your committee after due consideration thought it advisable to make this a matter of legislation rather than for departmental regulations.
>
> *It would appear to be equitable and fair when it is remembered that as a matter of*

fact in most of the instances the reason the disabled soldier failed to keep up his insurance was that he was short of funds and it took the Government some time to investigate and grant his compensation, and that because of this financial stringency he allowed his insurance to lapse. [Italics supplied.]

The provisions in the Act of August 9, 1921, for revival of insurance in the event of death subsequent to lapse and prior to reinstatement, were added by amendment from the floor of the House (Cong. Record, Vol. 61, Part 3, pp. 2422, 2423, 2426).

In the Senate Committee Report made in connection with this Act (S. Rep. No. 231, 67th Cong., 1st Sess., p. 12), it is said, in part:

> The second proviso of the House bill, which relates specifically to persons entitled to compensation under article 3 of the war risk insurance act, declares that insurance shall not lapse if such compensation has not been collected or if no claim has been made therefor, if at the time of lapse the insured was entitled to compensation in a sum equal to or in excess of the amount due from him in premiums, and directs the bureau to pay the insurance to the beneficiaries. There is no provision in the House bill for the payment of premiums due on such insurance. Your committee believes that as under this provision the insurance is not to lapse, but to be regarded as remaining in force, the section should be amended to require the deduction of the premiums due and interest thereon at 5 per cent per annum compounded annually before making payment to the beneficiary under the policy.

The provisions for reinstatement of lapsed insurance in Section 408 of the War Risk Insurance Act were reenacted in amended form by Section 304 of the World War Veterans' Act, 1924, which, as amended by subsequent enactments, provides, as contained in 38 U. S. C. 515:

> In the event that all provisions of the rules and regulations other than the requirements as to the physical condition of the applicant for insurance have been complied with an application for reinstatement, in whole or in part, of lapsed or canceled yearly renewable term insurance or United States Government life insurance (converted insurance) made after June 7, 1924, may be approved if made within one year after July 2, 1926, or within two years after the date of lapse or cancellation: *Provided,* That the applicant's disability is the result of an injury or disease, or of an aggravation thereof, suffered or contracted in the active military or naval service during the World War: *Provided further,* That the applicant during his lifetime submits proof satisfactory to the Administrator of Veterans' Affairs showing that he is not totally and permanently disabled. As a condition, however, to the acceptance of an application for the reinstatement of lapsed or canceled yearly renewable term insurance, where the requirements as to the physical condition of the applicant have not been complied with, or, for the reinstatement of the United States Government life insurance (converted insurance), the applicant shall be required to pay all the back monthly premiums which would have become payable if such insurance had not lapsed, together with interest at the rate of 5 per centum per annum,

compounded annually, on each premium from the date said premium is due by the terms of the policy: *Provided further,* That where, within one year after July 2, 1926, all of the requirements for reinstatement of yearly renewable term insurance under this section are complied with except the payment of unpaid premiums with interest, and proof satisfactory to the Administrator of Veterans' Affairs is furnished showing the applicant is unable to pay such premiums with interest or some part thereof, the application may be approved, and the amount of unpaid premiums with interest as provided in this section shall be placed as an interest-bearing indebtedness against the insurance, such indebtedness to bear interest at the rate of 5 per centum per annum, compounded annually, to be deducted in any settlement thereunder: *And provided further,* That except as provided in section 512 of this title, no yearly renewable term insurance shall be reinstated after July 2, 1927. (June 7, 1924, c. 320, §304, 43 Stat. 625; Mar. 4, 1925, c. 553, §15, 43 Stat. 1310; July 2, 1926, c. 723, §15, 44 Stat. 799; July 3, 1930, c. 849, §23, 46 Stat. 1001; July 3, 1930, c. 863, §2, 46 Stat. 1016.)

The provisions in Section 408 of the War Risk Insurance Act for revival and maturity of lapsed insurance were reenacted in amended form by Section 305 of the World War Veterans' Act, 1924, which, as amended by the Act of July 2, 1926, Sec. 16 (c. 723, 44 Stat. 790, 799–800) provides:

SEC. 305. Where any person has heretofore allowed his insurance to lapse, *or has canceled or reduced all or any part of such*

insurance, while suffering from a compensable disability for which compensation was not collected and dies or has died, or becomes or has become permanently and totally disabled and at the time of such death or permanent total disability was or is entitled to compensation remaining uncollected, then and in that event so much of his insurance as said uncollected compensation, computed in all cases at the rate provided by section 302 of the War Risk Insurance Act as amended December 24, 1919, would purchase if applied as premiums when due, shall not be considered as lapsed, *canceled or reduced;* and the United States Veterans' Bureau is hereby authorized and directed to pay to said soldier, or his beneficiaries, as the case may be, the amount of said insurance less the unpaid premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law: *Provided, That insurance hereafter revived under this section and section 309 by reason of permanent and total disability or by death of the insured, shall be paid only to the insured, his widow, child or children, dependent mother or father, and in the order named unless otherwise designated by the insured during his lifetime or by last will and testament.*[2] [Italics represent words added by the amendatory Act.]

In the House Committee Report made in connection with the Act of July 2, 1926 (H. Rep. No.

[2] Section 305 was further amended by the Act of May 29, 1928, Sec. 17 (c. 875, 45 Stat. 964, 971) to extend the clause "uncollected compensation" to compensation which was uncollectable by reason of a limitation clause contained elsewhere in the statute.

1217, 69th Cong., 1st Sess., pp. 7–8), it is said, in part:

> Section 17 amends section 305 to provide that canceled and surrendered insurance may be kept in force by uncollected compensation as well as "lapsed" insurance. The Comptroller General has recently ruled that canceled and surrendered insurance could not be revived under the terms of this section, but only "lapsed" insurance. The committee believes that disabled ex-service men who pay premiums on their insurance up to the time they are ready to cancel or surrender all or any part of it, should have the same privilege under this section as the men who fail to pay premiums and simply permit the contract to lapse.
>
> Section 18 amends section 305 by providing that insurance revived under the provisions of that section shall not be paid to any persons other than the widow, child, children, dependent mother or father, in the order named. This section is one which revives insurance by the use of uncollected compensation. It is a most liberal provision of the law and it was felt that it should not be permitted to revive insurance where no immediate members of the insured's family were alive to take the same.

At a hearing before the Senate Finance Committee (Hearings before the Committee on Finance, United States Senate, 69th Cong., 1st Session, on H. R. 12175, May 24, 25 and 26, 1926, pp. 50–51), General Hines, Director of the Veterans' Bureau, made the following statement with reference to the proposed amendment of Section 305 of the World War Veterans' Act, 1924:

Senator REED of Pennsylvania. Do you see any objection to the language on line 11 of page 36?

General HINES. That language will cover a decision of the comptroller, where he has held that insurance cannot be revived where the beneficiary has canceled or reduced his insurance.

Senator REED of Pennsylvania. I do not see any difference, in principle, between that case and the case where he has merely allowed it to lapse.

General HINES. No; but we feel that since the comptroller has so construed the law we had better insert this language to protect this legislation.

The report made by the Senate Finance Committee contains language virtually identical with that in the House Committee Report, *supra,* with respect to the amendment of Section 305 (S. Rep. No. 1105, 69th Cong., 1st Sess., p. 7).

The Comptroller General's decision referred to at the hearing and in the Committee Reports, *supra,* is evidently the one in the case of *Joseph J. Griffin,* A–11246, November 16, 1925, which is unreported and is, therefore, set out in full herein, as follows :

Joseph J. Griffin has requested review of settlement No. 084850, dated June 17, 1925, disallowing his claim for $362.78 representing 22 accrued installments on $3,000 of converted war risk insurance under policy No. K–461303, less accrued premiums and interest, for the period May 31, 1923, to February 28, 1925.

The facts as set forth in a memorandum dated February 15, 1925, from the Veterans' Bureau, are as follows:

"The facts in the case show that Jos. J. Griffin, entered the service in September, 1917, and applied for $10,000 of term insurance. The insured was discharged from the service on March 31, 1920, and continued to pay premiums on the term insurance to include April 1921. The insured in the year 1923, reinstated and converted $6,000 of the lapsed term insurance and paid premiums thereon to include August 1924. The remaining $4,000 of term insurance was converted effective May 1, 1921, and premiums paid thereon to include July 1921, when the insured reduced the $4,000 of converted insurance to $1,000, and changed the form of the policy. Premiums were paid on the $1,000 of converted insurance to include September 1924. The Central Board of Appeals on September 10, 1924, rated the insured permanent partial 75% disabled from date of discharge to May 31, 1923, and permanent and total thereafter. No question is raised in regard to the payment of insurance on the $6,000 and $1,000 policies in force on the date the insured became permanently and totally disabled but the question is raised whether the $3,000 of converted insurance, which was surrendered at the time the $4,000 policy was reduced to $1,000, is payable under the provisions of Section 305 of the World War Veterans' Act.

"In discontinuing the $3,000 of insurance the insured executed a Bureau form on July 15, 1921, in which he states:

" 'I, the undersigned, hereby amend my application for conversion to United States Government life insurance, dated July 21.

1921, by stating that I desire to change my present policy from

30 P. L., $4,000.00
to
20 year endowment, $1,000.00

In all other respects my application remains unchanged.' "

Section 305 of the World War Veterans' Act of June 7, 1924, 43 Stat. 626, provides as follows:

"SEC. 305. Where any person has heretofore allowed his insurance to lapse while suffering from a compensable disability for which compensation was not collected and dies or has died, or becomes or has become permanently and totally disabled and at the time of such death or permanent total disability was or is entitled to compensation remaining uncollected, then and in that event so much of his insurance as said uncollected compensation, computed in all cases at the rate provided by section 302 of the War Risk Insurance Act as amended December 24, 1919, would purchase if applied as premiums when due, shall not be considered as lapsed; and the United States Veterans' Bureau is hereby authorized and directed to pay to said soldier, or his beneficiaries as the case may be the amount of said insurance less the unpaid premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law."

The statute expressly provides only for policies that have lapsed. It does not provide for surrendered or canceled policies. As to the former see 3 Comp. Gen. 582. A lapsed policy is generally understood to

mean one on which there has been failure or neglect to pay premiums. The entire tenor of the section shows an intention to afford relief only when there has been a failure or neglect to pay premiums. In the present case the situation involved was not merely a failure or neglect to pay premiums, but an affirmative action in changing the form of, and reducing the amount of the policy, equivalent to a surrender or cancellation. That is to say, on May 1, 1921, when the insured converted the remaining $4,000 term insurance of his original $10,000 policy into a 30 payment-life policy, he exhausted and terminated his rights with respect to his term insurance, and on August 1, 1921, when the insured changed his $4,000 30 payment-life policy to a $1,000 20-year-endowment policy, his affirmative action was equivalent to a surrender or cancellation of the $4,000 converted policy. There can not be read into the statute an intention to include surrendered or canceled policies in the absence of any specific provision therefor. In this connection it is noted that the preceding section 304, of the statute, providing for reinstatement under certain conditions, the relief is made applicable to "lapsed or canceled" policies. If the Congress had intended the following section 305, to include both of these classes of policies, it must be assumed that it would have so provided.

In view of the terms of the statute, *supra*, I am constrained to hold that there was no authority of law to revive the $3,000 of insurance under the converted policy No. K–461303 by application as premiums of the uncollected installments of disability compensation under the retroactive rating of disability.

Upon review the settlement must be and is sustained.

J. R. McCARL,
Comptroller General
of the United States.

Section 307 of the World War Veterans' Act, 1924 (c. 320, 43 Stat. 607, 627), as amended by Section 24, c. 849 of the Act of July 3, 1930 (46 Stat. 991, 1001–1002) provides:

> SEC. 307. All contracts or policies of insurance heretofore or hereafter issued, reinstated, or converted shall be incontestable from the date of issuance, reinstatement, or conversion, except for fraud, nonpayment of premiums, or on the ground that the applicant was not a member of the military or naval forces of the United States, and subject to the provisions of section 23: *Provided, That the insured under such contract or policy may, without prejudicing his rights, elect to make claim to the bureau or to bring suit under section 19 of this Act on any prior contract or policy, and if found entitled thereto, shall, upon surrender of any subsequent contract or policy, be entitled to payments under the prior contract or policy: Provided further, That this section shall be deemed to be effective as of April 6, 1917, and applicable from that date to all contracts or policies of insurance.* [Italics represent the pertinent provisions added by the amendatory Act.]

In the Senate Committee Report made in connection with the Act of July 3, 1930, *supra* (S. Rep. No. 1128, 71st Cong., 2nd Sess., p. 10), it is said, in part:

Further provision is made permitting the insured to elect after a reinstatement or conversion to go back to some prior contract and claim rights thereunder; and if he proves himself entitled to such rights, upon surrender of the latter contract or contracts, to be paid under the prior contract. The purpose is to prohibit the raising of estoppel against the claimant either in or out of the courts because of his reinstatement or conversion of his insurance. Provision is also contained whereby suit may be brought either in the original action, or by alternative plea in the same suit with a subsequent contract or policy. Recovery, however, can only be effected upon one of the contracts or policies. The effect of the present practice of the bureau in raising estoppel is to penalize the man who pays his premiums or tries to continue all or a part of his insurance in force. This amendment is specifically made retroactive in order that in any case where the claim has been heretofore disallowed on the ground of estoppel, or because of the policy not being incontestable, the insured, or the beneficiary under such contract or policy may, if he/she so elects, have the benefit thereof.

Letters from the Administrator of Veterans' Affairs to the Solicitor General:

Office of
The Administrator of
Veterans' Affairs
VETERANS' ADMINISTRATION,
Washington, December 5, 1936.

United States of America vs. *Harry J. Madigan*

The Honorable, THE SOLICITOR GENERAL,
Department of Justice,
Washington, D. C.

SIR: I am responding to your letter of December 3, 1936, relative to steps which the Department of Justice proposes to take in the case of United States of America, Appellant, vs. Harry J. Madigan, Appellee, United States Circuit Court of Appeals, Ninth Circuit, No. 8038, wherein you request that you be furnished some estimate of the increased liability under Section 305 revivals, if the rule in the Madigan case should be followed, also a statement of the general administrative policy which the Veterans' Bureau, now the Veterans' Administration, has followed with reference to cases of this type.

The Veterans' Administration and its predecessors have awarded insurance (both term and converted) under Section 305, World War Veterans' Act, and Section 408, War Risk Insurance Act, in more than 12,000 cases. The average amount of term insurance saved from lapse in such cases is approximately $7,000. A review of a portion of these cases reveals that converted insurance is involved in a relatively small proportion of them and that the average amount of converted insurance prevented

from lapse is approximately $2,000. A recent study of the records in a limited number of adjudicated cases involving converted cases indicates that there have been approximately 300 cases in which the facts were substantially similar to those in the *Madigan case,* and it is estimated that the insurance benefits payable in those cases, if that decision were followed, would exceed those which have been paid administratively by approximately $1,500,000 in the aggregate. There are now pending before the Veterans' Administration 686 claims (both death and disability) for converted insurance involving an aggregate amount of approximately $3,500,000.

While the point raised in *United States* v. *Madigan,* 85 F. (2d) 609 (C. C. A. 9th), has not been the subject of a specific formal administrative decision, it has been the consistent practice of the Veterans' Administration and its predecessors to administer Section 305, World War Veterans' Act, 1924, and the preceding provisions of Section 408, War Risk Insurance Act, on the theory that they contained no provisions, express or implied, for revival of insurance under a yearly renewable term contract after it had been converted to a policy of United States Government life insurance. Moreover, this practice continued without change subsequent to the amendment to Section 307, World War Veterans' Act of the Act of July 3, 1930, the view being held that Congress did not intend by that Act to amend Section 305, World War Veterans' Act.

It thus appears that the decision of the Circuit Court of Appeals for the Ninth Circuit in the *Madigan case* is contrary to the long continued administrative practice.

Although the records of the Veterans' Administration do not permit of an exact estimate of the total additional costs, including those arising in future claims, which would result under the rule laid down in the *Madigan* case, sufficient data is at hand to show conclusively that the additional liability thereby incurred might be substantial.

The question of law involved in the *Madigan* case would, therefore, seem to be important not only because of the desirability of proper statutory construction, but also because it may involve a substantial liability to the Government which, under the indicated practice of this Administration, has not heretofore been considered to exist.

I hope, therefore, that it will be possible to obtain a final determination of the question by the Supreme Court. If the Veterans' Administration may be of any further assistance to your Department, you may be assured that every effort will be made be cooperate.

Respectfully,

(s) Frank T. Hines
FRANK T. HINES,
Administrator.

Office of
The Administrator of
Veterans' Affairs
VETERANS' ADMINISTRATION,
Washington, February 11, 1937.

The Honorable, THE SOLICITOR GENERAL,
Department of Justice,
Washington, D. C.

SIR: Further reference is made to your letter of February 5, 1937, concerning litigation in the case of *United States* vs. *Harry*

J. Madigan, now pending before the United States Supreme Court. You request a statement as to the policy of the Veterans' Administration and its predecessors, the Veterans' Bureau and the Bureau of War Risk Insurance, in cases where after a contract of yearly renewable term insurance had been converted, and the converted policy allowed to lapse the insured desired a reinstatement of the temporary term contract. It seems scarcely necessary to state that such a case could not arise after the expiration of the time limit for carrying term insurance, laid down in Section 301 of the World War Veterans' Act, 1924, as amended, (Title 38, U. S. Code, 512.)

As to cases which arose prior to the expiration of the time limit for carrying temporary yearly renewable term insurance the controlling regulation was Treasury Decision 58 W. R. promulgated January 26, 1920, which was one of the first Treasury Decisions dealing with converted insurance in its permanent form as provided for by the War Risk Insurance Act, 1917, as amended. Paragraph 4 of Treasury Decision 58 W. R.[1] is here quoted:

"A person who has converted war-time yearly renewable term insurance into Government life insurance shall not be permitted to reconvert the Government life insurance into war-time yearly renewable term insurance, nor shall a person who has taken out Government life insurance originally be permitted to convert the same into war-time yearly renewable term insurance."

Treasury Decision 58 W. R. was superseded by Veterans Bureau Regulation No. 9

[1] Regulations & Procedure, U. S. Veterans' Bureau, 1930, Pt. 1, pp. 23, 24.

of October 29, 1921[4] but the foregoing paragraph quoted from the Treasury Decision was carried forward without change.

I may state, that, in my opinion, the wording as contained in Paragraph 4 of Treasury Decision 58 W. R. and Veterans Bureau Regulation No. 9 is so clear that I have never had occasion to rule on any case presented by reason of any possible ambiguity in said Treasury Decision. Similarly, I am not aware that my predecessors were ever called upon to construe this particular language of the Treasury Decision in question. It has been the uniform position of the Veterans' Administration and of its predecessors, as long as this question was pertinent, to hold that when a policy of yearly renewable term insurance had been converted and the converted policy allowed to lapse, there was then no right to reinstate the original term insurance, any reinstatement being limited naturally to the converted contract.

Respectfully,

(s) Frank T. Hines
FRANK T. HINES,
Administrator.

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[4] Regulations & Procedure, U. S. Veterans' Bureau, 1930, Pt. 1, Par. 4, pp. 80, 81.

U. S. GOVERNMENT PRINTING OFFICE: 1937

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1936

No. 562

United States of America,

Petitioner,

vs.

Harry J. Madigan,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR HARRY J. MADIGAN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Parker, Stone & Baird Co., Law Printers, Los Angeles.

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1936

No. 562

United States of America,
Petitioner,

vs.

Harry J. Madigan,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR HARRY J. MADIGAN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

OPINION BELOW.

The District Court rendered no opinion. The opinion of the Circuit Court of Appeals is reported in 85 Fed. (2d) 609.

QUESTION PRESENTED.

Whether a veteran, totally and permanently disabled, who prior to his total permanent disability, has had two contracts of insurance with the United States ((1) a term contract; (2) a policy of United States life insurance) and who upon becoming totally and permanently disabled had due and uncollected compensation, which compensation was due and uncollected on the date he ceased to pay premiums on each contract of insurance, may elect to make claim and bring suit on the prior contract, and if found entitled to benefits thereunder, upon surrender of the subsequent contract, receive payments under the prior contract.

STATUTES INVOLVED.

Section 305 of the World War Veterans' Act, 1924, as amended July 2, 1926, c. 723, 44 Stat. 799, 800 (U. S. C., Title 38, Sec. 516), provides, so far as pertinent, as follows:

> "Where any person has heretofore allowed his insurance to lapse, or has canceled or reduced all or any part of such insurance, while suffering from a compensable disability for which compensation was not collected and dies or has died, or becomes or has become permanently and totally disabled at the time of such death or permanent total disability was or is entitled to compensation remaining uncollected, then and in that event so much of his insurance as said uncollected compensation, computed in all cases at the rate provided by section 302 of the War Risk Insur-

ance Act as amended December 24, 1919, would purchase if applied as premiums when due, shall not be considered as lapsed, canceled, or reduced; and the United States Veterans' Bureau is hereby authorized and directed to pay to said soldier, or his beneficiaries, as the case may be, the amount of said insurance less the unpaid premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law: * * *"

Section 307 of the World War Veterans' Act, as amended by the Act of July 3, 1930, c. 849, 46 Stat. 1001, 1002 (U. S. C., Title 38, Sec. 518) provides as follows:

"All contracts or policies of insurance heretofore or hereafter issued, reinstated, or converted shall be incontestable from the date of insurance, reinstatement, or conversion, except for fraud, nonpayment of premiums, or on the ground that the applicant was not a member of the military or naval forces of the United States, and subject to the provisions of section 23: Provided, That the insured under such contract or policy may, without prejudicing his rights, elect to make claim to the bureau or to bring suit under section 19 of this Act on any prior contract or policy, and if found entitled thereto, shall, upon surrender of any subsequent contract or policy, be entitled to payments under the prior contract or policy: Provided further, That this section shall be deemed to be effective as of April 6, 1917, and applicable from that date to all contracts or policies of insurance."

ARGUMENT.

There is presented in this case, no question which has not been presented to the Circuit Courts of Appeals and on which these circuit courts are not agreed. It has been maintained by the representatives of the Veterans Administration that before the provisions of section 305, *supra,* may be invoked there must be a lapsation of the insurance contract. The courts have uniformly held against this contention. The courts are agreed that when an insured veteran ceases to pay premiums on his contract of war risk insurance at a time he is entitled to compensation, and if that compensation remains uncollected on the date of total permanent disability, the insurance contract does not lapse and revive but remains in force. (See *United States v. Woolen* (C. C. A. 6th), 25 Fed. (2d) 673,679. *United States v. Hendrickson,* 53 Fed. (2d) 797, 799 (C. C. A. 10th). *United States v. Sellers,* 75 Fed. (2d) 623,625 (C. C. A. 5th), certiorari denied, 295 U. S. 763.) Here, it is admitted, that, on November 1, 1919, the insured was suffering from a compensable disability. That on this date he was less than totally and permanently disabled. That the compensation due on November 1, 1919, remained uncollected until a date subsequent to the date of total permanent disability. The one reason advanced as a defense to a right to recover on the original contract of insurance, is a subsequent transaction between the insured and the government, and because insured paid premiums on a converted policy of insurance for the months of November and December, 1919.

The question presented to the trial court and to the Circuit Court of Appeals in this case was an interpretation of section 307, as amended by the Act of July 3, 1930, *supra.* This section of the law has been many

times interpreted by the Circuit Courts of Appeal. (See *United States v. Stamey*, 48 Fed. (2d) 150, 152 (C. C. A. 9th), and *Herrig v. United States*, 53 Fed. (2d) 327, 328 (C. C. A. 9th). *Sprencel v. United States*, 47 Fed. (2d) 501, 504 (C. C. A. 5th). *United States v. Arzner*, 57 Fed. (2d) 488, 490 (C. C. A. 9th).) The Circuit Courts are agreed that section 307 allows an action on an original contract of insurance unembarrassed by subsequent transactions with the government on any subsequent contract. That a subsequent contract may be completely ignored. The trial court and the Circuit Court of Appeals in this case merely followed the rule laid down in *United States v. Arzner, supra,* which opinion was affirmed by this court in *United States v. Arzner*, 287 U. S. 470.

The ground upon which the decision of the Circuit Court in this case is based, appears clearly in the opinion. On page 611 of the opinion the court said: "We think the decision of the court in *United States v. Arzner*, 57 Fed. (2d) 488, 489, is decisive;" and on page 612 of the opinion below it is said: "The above quoted case (*United States v. Arzner*) sets at rest the contentions of the government and is determinative of this appeal."

The purpose of Congress in enacting the amendment of July 3, 1930, to section 307 was to prevent a veteran from being penalized because he attempted to pay premiums and carry his insurance. Here, because premiums were paid for the months of November and December, 1919, on a policy too large for the insured to carry, it is contended, insured has lost his rights on his prior and cheaper insurance, notwithstanding the intention of Congress that a veteran should not be so penalized.

CONCLUSION.

The case was correctly decided below, and the petition for certiorari should be denied.

Respectfully submitted,

DAVID SPAULDING,

Attorney for Respondent.

IN THE

SUPREME COURT
OF THE
UNITED STATES.

October Term, 1936

No. 562

United States of America,
Petitioner,

vs.

Harry J. Madigan,
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On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

BRIEF OF HARRY J. MADIGAN.

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IN THE

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On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

BRIEF OF HARRY J. MADIGAN.

OPINIÓN BELOW.

The District Court for the Southern District of California rendered no opinion. The opinion of the Circuit Court of Appeals [R. 17-21] is reported in 85 F. (2d) 609.

QUESTION PRESENTED.

Whether a veteran, totally and permanently disabled, who prior to his total permanent disability, has had two contracts of insurance with the United States ((1) a term contract; (2) a policy of United States life insurance)

and who upon becoming totally and permanently disabled had due and uncollected compensation, which compensation was due and uncollected on the date he ceased to pay premiums on each contract of insurance, may elect to make claim and bring suit on the prior contract, and if found entitled to benefits thereunder, upon surrender of the subsequent contract, receive payments under the prior contract.

STATUTES INVOLVED.

Section 305 of the World War Veterans' Act, 1924, as amended July 2, 1926, 44 Stat. 799, 800 (U. S. C., Title 38, Sec. 516), provides, so far as pertinent, as follows:

> "Where any person has, heretofore, allowed his insurance to lapse, or has canceled or reduced all or any part of such insurance, while suffering from a compensable disability for which compensation was not collected and dies or has died, or becomes or has become permanently and totally disabled, and at the time of such death or permanent total disability was or is entitled to compensation remaining uncollected, then and in that event so much of his insurance as said uncollected compensation, computed in all cases at the rate provided by Section 302 of the War Risk Insurance Act as amended December 24, 1919, chapter 16, Forty-first Statutes, page 371, would purchase if applied as premiums when due, shall not be considered as lapsed, canceled, or reduced; and the Veterans' Administration is hereby authorized and directed to pay to said soldier, or his beneficiaries, as the case may be, the amount of said insurance less the unpaid premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law: * * *"

Section 307 of the World War Veterans' Act, as amended by the Act of July 3, 1930, 46 Stat. 1001, 1002 (U. S. C., Title 38, Sec. 518) provides as follows:

> "All contracts or policies of insurance heretofore or hereafter issued, reinstated or converted shall be incontestable from the date of issuance, reinstatement, or conversion, except for fraud, nonpayment of premiums, or on the ground that the applicant was not a member of the military or naval forces of the United States, and subject to the provisions of section 23: Provided, That the insured under such contract or policy may, without prejudicing his rights, elect to make claim to the bureau or to bring suit under section 19 of this Act on any prior contract or policy, and if found entitled thereto, shall, upon surrender of any subsequent contract or policy, be entitled to payments under the prior contract or policy: Provided further, That this section shall be deemed to be effective as of April 6, 1917, and applicable from that date to all contracts or policies of insurance."

STATEMENT.

Harry J. Madigan, respondent, hereinafter called plaintiff, served during the World War in the armed forces of the United States. While so engaged he came into possession of a contract of war risk term insurance which contract insured against death and against total permanent disability. Premiums were paid by plaintiff on this policy of insurance until November 1, 1919. On November 1, 1919 by virtue of subsequent ratings made, plaintiff was determined to be suffering from a compensable disability for which compensation remained uncollected on the date plaintiff became totally and permanent

disabled. [R. 5.] At the time of trial herein, it was agreed [R. 5] plaintiff became totally and permanently disabled on June 6, 1925. That on June 6, 1925 plaintiff had compensation due and uncollected in the amount of $312.25.

On November 1, 1919, plaintiff and defendant entered into a contract of twenty payment life insurance on which premiums were paid for the months of November and December, 1919. By reason of the grace period and these premiums, this policy remained in force through the month of January, 1920. On January 31, 1920, as on November 1, 1919, plaintiff had due compensation which remained uncollected on June 6, 1925.

It is conceded herein (Br. p. 4) that defendant is required under the provisions of Section 305 of the World War Veterans' Act (38 U. S. C. A., Sec. 516) to apply the $312.25 due on the date of permanent total disability, as premiums on insurance so as to carry in force, until the date of total permanent disability, so much insurance as $312.25 would purchase if it had been applied as premiums when due. Petitioner contends the uncollected compensation due on the date of total permanent disability must be applied as premium on the twenty payment life insurance policy. Plaintiff contends he has a right to elect to make claim and bring suit on any prior contract or policy, and if found entitled thereto, upon surrender of the subsequent policy, be entitled to payments under the prior contract.

SUMMARY OF ARGUMENT.

1. Section 305 of the World War Veterans' Act, 1924, as amended, provides that in certain instances money due from the insuror to the insured shall be used to maintain insurance in force which insurance would otherwise be lost.

2. Section 307 of the World War Veterans' Act, as amended by the Act of July 3, 1930, removes the defense of novation or estoppel where an insured has entered into subsequent contracts with the insuror and later seeks to recover on a prior contract. It provides an insured may elect to make claim and bring suit on a prior contract, and if found entitled to benefits under the prior contract, he may recover said benefits.

Section 307 provides all contracts of insurance shall be incontestable from the date of the issuance, reinstatement, or conversion of said contracts.

Section 307 does not limit actions on prior contracts to contracts which have matured prior to a subsequent reinstatement or conversion. An insured is allowed to make claim and litigate the entire prior contract. Rights allowed under Section 305 are rights under a contract.

3. There is no contention by plaintiff that Section 307 contains provisions for reviving insurance. The question is the effect of the provisions in Section 307 which makes each contract incontestable, and which eliminates the defense of novation.

4. If under Section 307 the contracts are incontestable and if there is no novation, it is the contention of the plaintiff that, the two agreements should be treated as separate instruments. That when the subsequent contract

was entered into, the first contract was either automatically canceled or it lapsed. Under Section 307 it could not merge into the new contract. If the original contract lapsed or was canceled, there was on that date, uncollected compensation which compensation remained uncollected on the date of total permanent disability. [R. 5.]

5. It is true the transaction which took place on November 1, 1919 is called a "conversion", but by the provisions of Section 307 as amended July 3, 1930, the act of conversion as used in war risk insurance, is rendered ineffectual. The amendment of July 3, 1930 was specifically made effective as of April 6, 1917.

ARGUMENT.

In *United States v. Arzner* (C. C. A. 9), 57 F. (2d) 488, affirmed 287 U. S. 470, 53 S. Ct. 238, the Circuit Court of Appeals had occasion to consider the legal effect of Section 307 as amended by the Act of July 3, 1930. The Court took into consideration the provisions in the section making all contracts incontestable, and the purpose of the section which was to eliminate the defense of novation, which defense had been sustained in many cases by that Court (*United States v. Buzard*, 33 F. (2d) 883 (C. C. A. 9); *United States v. Kusnierz*, 33 F. (2d) 887 (C. C. A. 9); *United States v. Allen*, 33 F. (2d) 888 (C. C. A. 9).) The Court said:

> "The purpose of this amendment was to meet the situation that had arisen by reason of numerous holdings of the courts to the effect that the subsequent veterans' insurance policies were novations, and that thereafter, recovery could not be had upon the original insurance, and that the ordinary principles of

> contract applied to the veterans' policies * * * By this legislation he was not required to jeopardize his rights under the subsequent contracts or policies in order to present his claim under the superseded war risk insurance * * * He could completely ignore the subsequent policies."

On page 490 of the same case it is said:

> "We think the phrase in the amendment of July 3, 1930 supra 'may without prejudicing his rights elect to make claim to the Bureau or to bring suit under section 445 of this title on any prior contract or policy, and if found entitled thereto' contemplates a suit upon the original policy unembarrassed by any subsequent transactions with the Government' upon 'any subsequent contract or policy * * *'."

Plaintiff here has elected to make claim and bring suit on his original contract. If he is entitled to completely ignore the subsequent contract, all elements necessary to bring Section 305 of the World War Veterans' Act into play are present, for on November 1, 1919 plaintiff was less than totally and permanently disabled. On that date he ceased to pay premiums on his war risk term insurance. On that date he had due and uncollected compensation [R. 5] which compensation remained uncollected on the date of total permanent disability. It has been held repeatedly when such a situation exists, an action for insurance benefits under the contract may be maintained.

In *United States v. Sellers,* 75 F. (2d) 623, 625 (C. C. A. 5), certiorari denied 295 U. S. 763, Section 305 of the World War Veterans' Act was under consideration. The Court said:

> "Though the direction to pay under these circumstances is addressed to the Bureau, we are of the

opinion that in the event of a disagreement, the claim is one under the contract of insurance."

It is true as pointed out by the petitioner, and as stated in the reports of the Committees of the House and Senate, the purpose of Congress in enacting the amendment of July 3, 1930, to Section 307, was to prevent a veteran from being penalized because he attempted to pay premiums and carry his insurance. Here because premiums were paid for the months of November and December, 1919 on a policy too large for plaintiff to carry, it is contended, plaintiff has lost his rights on his prior and cheaper insurance, notwithstanding the intention of Congress that a veteran should not be so penalized.

RETURN OF PREMIUMS.

Section 19 of the World War Veterans' Act as amended July 3, 1930 (38 U. S. C. A., Sec. 445) provides:

> "In the event of disagreement as to claim, including a claim for recovery of premiums, under a contract of insurance * * * an action on the claim may be brought against the United States."

It is admitted herein [R. 5] that a claim was made by plaintiff and denied. While the amount involved as premium payments for the months of November and December, 1919 is not large, it would appear that upon a cancellation and surrender of the subsequent policy, a return of premiums is contemplated by Section 19. Insurance premiums during the months of November and December, 1919 were not earned, for during these months plaintiff, by reason of due and uncollected compensation, was fully covered by Government insurance.

CONCLUSION.

In conclusion it is respectfully submitted that by virtue of Section 307, plaintiff is given the right to elect to make claim and bring suit under any prior contract or policy; that plaintiff ceased to pay premiums on his war risk term insurance at a time he had due and uncollected compensation, and at a time when he was less than totally and permanently disabled. That by virtue of the judgment herein, plaintiff's subsequent policy is canceled and set aside and plaintiff therefore, is entitled to recover on his prior contract. It is therefore respectfully submitted that the judgment of the Court below should be affirmed.

Respectfully submitted,

DAVID SPAULDING,

Attorney for Respondent, Harry J. Madigan.

P. O. Box 1, West Los Angeles, Calif.,

SUPREME COURT OF THE UNITED STATES.

No. 562.—October Term, 1936.

The United States of America, *vs.* Harry J. Madigan.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[March 29, 1937.]

Mr. Justice Stone delivered the opinion of the Court.

Respondent brought this suit in the District Court for Southern California to recover total permanent disability benefits under a contract of war risk term insurance. While in the military service of the United States in the World War, he acquired a term policy of war risk insurance. On November 1, 1919, availing himself of the benefits of § 404 of the War Risk Insurance Act of October 6, 1917, c. 105, 40 Stat. 398, 410, he converted his term insurance into a twenty-payment life policy of United States Government insurance. He paid premiums on this policy until January 31, 1920, when it was allowed to lapse for non-payment of premiums. On the date of the conversion of his first policy, he was suffering from a "compensable disability", and, after the lapse of the second, on June 6, 1925, he was rated by the Veterans' Bureau as totally and permanently disabled. At that time he was entitled to disability compensation from the Government in the sum of $312.25.

On the trial in the district court a jury was waived and the case was heard on an agreed statement of facts. The court gave judgment for the respondent for permanent disability benefits under his first policy, with respect to so much of the insurance as the $312.25 of disability compensation, remaining uncollected at the time of total permanent disability, would have purchased if applied to the payment of premiums due upon the original policy between the date of its conversion and the date of total disability. The Court of Appeals for the Ninth Circuit affirmed, 85 F. (2d) 609, holding that respondent was entitled, under §§ 305,

307 of the World War Veterans' Act, to revive the original term insurance and to recover under it the permanent disability benefits awarded by the trial court. We granted certiorari, — U. S. —, because of the importance of the decision of the Court of Appeals, which conflicts with the consistent rulings of the Administrator of Veterans' Affairs, and affects, adversely to the Government, a large number of pending insurance claims.

Section 305 of the World War Veterans' Act of June 7, 1924, c. 320, 43 Stat. 624, 626, as amended July 2, 1926, c. 723, 44 Stat. 790, 799, 38 U. S. C. § 516, applies to lapsed, cancelled or reduced insurance policies. It provides:

"Where any person has heretofore allowed his insurance to lapse, or has canceled or reduced all or any part of such insurance, while suffering from a compensable disability for which compensation was not collected and dies or has died, or becomes or has become permanently and totally disabled and at the time of such death or permanent total disability was or is entitled to compensation remaining uncollected, then and in that event so much of his insurance as said uncollected compensation, . . . would purchase if applied as premiums when due, shall not be considered as lapsed, canceled or reduced; and the United States Veterans' Bureau is hereby authorized and directed to pay to said soldier, or his beneficiaries, as the case may be, the amount of said insurance . . ."

Section 307, as amended July 3, 1930, 46 Stat. 991, 1001, 38 U. S. C. § 518, relates to all insurance policies "heretofore or hereafter issued, reinstated or converted." It declares that all such policies shall be incontestable and provides:

"That the insured under such contract or policy may, without prejudicing his rights, elect to make claim to the bureau or to bring suit under section 19 of this Act on any prior contract or policy, and if found entitled thereto, shall, upon surrender of any subsequent contract or policy, be entitled to payments under the prior contract or policy . . ."

Respondent elected to claim under his original policy, presumably because the rate of premiums for the term insurance was lower than for the twenty-payment life policy, and the $312.25 of disability compensation would purchase a larger amount of the former type than of the latter. The Government admits that the respondent is entitled, under § 305, to revive the twenty-payment life policy which has lapsed, but contends that he is not entitled to revive the earlier term insurance which he had converted, be

cause § 305 omits any reference to converted insurance, such as appears in § 307.

All war risk policies were required to be for term insurance by § 404 of the War Risk Insurance Act, but that section permitted conversion of the insurance into other forms, after termination of the war. When Congress desired to legislate about one form of insurance thus changed into another, it explicitly used the descriptive term "converted."[1] The omission of any reference to converted insurance in § 305 indicates that the privilege of reviving a lapsed, cancelled or reduced policy, was not intended to extend to an earlier policy converted into another, whose lapse is the condition of the revival. Such must be taken to be the meaning if it is consistent with the purposes of the section, disclosed by its legislative history and with the provisions of other sections.

The legislative history supports the government's argument that from the beginning the aim of the legislation later embodied in § 305 was to permit the veteran to revive his policy when he had allowed it to lapse, for want of funds, at a time when there was money due him from the government for a compensable disability. The supposition was that he would have paid the premiums on the lapsed policy if he had then received the sum due from the government—a supposition which is inadmissible if, at that time, he had converted low premium term insurance into any of the other forms of insurance commanding a higher premium, as permitted by § 404.

In its original form, § 305 appeared as a part of § 408 of the War Risk Insurance Act, added by the Act of August 9, 1921, § 27, c. 57, 42 Stat. 147, 156-157. The bill which became § 408, as originally reported by the House Committee, provided for the reinstatement by disabled veterans of their lapsed and cancelled policies. In recommending this legislation the Committee of the House having it in charge pointed out that most such lapses and cancellations occurred at a time when disability compensation was due to the veteran, and were probably occasioned by lack of funds.[2] The bill was amended

[1] See World War Veterans' Act, 1924, § 307, as amended July 3, 1930, 46 Stat. 991, 1001, 38 U. S. C. § 518. Compare World War Veterans' Act, 1924, § 310, 45 Stat. 970, 38 U. S. C. § 512 a; § 311, 45 Stat. 970, 38 U. S. C. § 512 b; § 302, 43 Stat. 625, 38 U. S. C. § 513; § 308, 44 Stat. 790, 800, 38 U. S. C. § 516 a, for legislation applying the term "converted" to the subsequent, United States Government life insurance.

[2] Report of House Committee, No. 104, 67th Cong., 1st Sess., p. 10, states: "It would appear to be equitable and fair when it is remembered that as a

on the floor of the House[3] so as to include the provisions later elaborated into § 305. They permitted the revival of a lapsed policy in favor of the beneficiaries of a deceased veteran, if, at the time of the lapse, he had been entitled to money from the Government for a compensable disability.[4] The proviso, upon which revival was conditioned, that at the time of the lapse compensation be due from the Government to the veteran, made more explicit the purpose indicated in the Committee Report.[5]

As then adopted, the revival provision applied only to lapsed policies, but as amended by the Act of July 2, 1926, it was extended to include "cancelled or reduced" insurance. This amendment was adopted for the purpose of avoiding a ruling of the Comptroller General that the phrase "lapsed insurance" did not embrace cancelled or reduced insurance, even though the cancellation or reduction occurred at a time when compensation was owing to the veteran. See Report of House Committee, No. 1217, 69th Cong., 1st Sess., pp. 7-8; Hearings before Senate Finance Committee, 69th Cong., 1st Sess., on H. R. 12175, pp. 50-51. Neither the words nor the legislative history of § 305 suggest that the phrase "canceled or reduced insurance" was intended to include insurance elsewhere described in the Act as "converted", at least unless the conversion was accompanied by a reduction of the policy. The like administrative construction which has consistently been given to the section by the Veterans' Bureau[6] is of persuasive force. *Norwegian Products Co.* v. *United States*, 288 U. S. 294, 315; *Brown* v. *United States*, 113 U. S. 568, 571.

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matter of fact, in most of the instances, the reason the disabled soldier failed to keep up his insurance was that he was short of funds and it took the Government some time to investigate and grant his compensation, and that because of this financial stringency he allowed his insurance to lapse."

[3] 61 Cong. Rec. 2422.

[4] Section 408 was amended by the Act of March 4, 1923, c. 291, 42 Stat. 1521, 1525-1526, to provide that a lapsed policy could be revived by one who became permanently and totally disabled.

[5] See 34 Opinions, U. S. Attorneys General, 369, 371.

[6] See communication of Administrator of Veterans' Affairs to the Solicitor General, December 5, 1936: " . . . it has been the consistent practice of the Veterans' Administration and its predecessors to administer Section 305, World War Veterans' Act, 1924, and the preceding provisions of Section 408, War Risk Insurance Act, on the theory that they contained no provisions, express or implied, for revival of insurance under a yearly renew ble term contract after it had been converted to a policy of United States Government life insurance. . . ."

The other sections of the Act are consistent with this construction of § 305. Section 307 permits the insured, if totally disabled, to make claim under his converted policy and entitles him to the benefits of that policy "if found entitled thereto." See *United States* v. *Arzner,* 287 U. S. 470, 473. But it is plain that respondent is not "entitled" to total disability benefits under the original policy, within the meaning of § 307, because the total disability did not occur until after its conversion. Section 307 does not, either by its terms or by reasonable implication, extend the privileges of § 305 to converted insurance. The legislative history of § 307 does not disclose any purpose to amend § 305, or to depart from its policy, and in any case the modification by implication of the settled construction of an earlier and different section is not favored. *United States* v. *Monday,* 222 U. S. 175, 182; *Ibanez* v. *Hong Kong Banking Corporation,* 246 U. S. 621, 626. The right of respondent to revive his insurance is limited to the lapsed twenty-payment life policy.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.